University of Alberta

The Role of Occupational Therapy Expert Witnesses in Alberta

by

Debra Margaret Hall-Lavoie ©

A thesis submitted to the Faculty of Graduate Studies and Research

in partial fulfillment of the requirements for the degree of Master of Science.

Department of Occupational Therapy

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To my mother,

because she always believed in a woman's right to education.

ABSTRACT

The objective of this study was to examine the role of occupational therapists as expert witnesses. Two surveys were used to collect information on medical-legal service provision, professional characteristics of therapists and referring lawyers, ratings of the relative importance of occupational therapy services, and ratings of lawyers' satisfaction with occupational therapy services. A total of 78 occupational therapists and 561 personal injury lawyers in Alberta were surveyed, and 18 occupational therapists were interviewed. The survey return rates were 85% and 27% for the therapist and lawyer groups respectively. The therapists provided a wide range of functional evaluation services to lawyers and they tended to be experienced professionals. Occupational therapy was perceived to be less important than medicine and counselling professions, but more important than other allied health professions. Lawyers' mean self-ratings of satisfaction with occupational therapy were lower than mean perceived ratings of occupational therapists. Recommendations are presented.

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TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION 1

CHAPTER 2: LITERATURE REVIEW

2.1 Tort Law and the Expert Witness: A Historical Perspective 3

2.2 The Role of Expert Witnesses: A Legal Perspective 4

2.3 The Role of Expert Witnesses: Medical and Paramedical Perspectives 6

2.4 Occupational Therapists as Expert Witnesses 9

2.5 Interdisciplinary Relations: Healthcare Professionals and Lawyers 12

2.6 Summary 13

2.7 Rationale for the Study 13

2.8 Research Objective and Questions 14

CHAPTER 3: METHODS AND PROCEDURES

3.1 Study Design 16

3.2 Subjects

3.2.1 Occupational Therapists 16

3.2.2 Lawyers 17

3.3 Methods

3.3.1 Instrumentation Development

3.3.1.1 Development of the Surveys 18

3.3.1.2 Development of the Interview Questionnaire 21

3.3.2 Survey Administration 21

3.3.3 Interviews With Occupational Therapy Respondents 22

3.4 Ethical Considerations 23

3.5 Data Analysis

3.5.1 Descriptive Analysis 23

3.5.2 Other Analyses 24

3.5.3 Qualitative Analyses 25

CHAPTER 4: RESULTS

4.1 Mailed Surveys

4.1.1 Return Rate of Occupational Therapist Respondents 26

4.1.2 Return Rate of Lawyer Respondents 26

4.2 Characteristics of Occupational Therapy and Lawyer Respondents

4.2.1 General Characteristics of Respondents 27

4.2.2 Types of Occupational Therapy Practice 30

4.2.3 Lawyers' Practice Characteristics 34

4.3 Lawyers' Utilization of Occupational Therapy Services

4.3.1 Lawyers' Preference for Occupational Therapist Qualifications 35

4.3.2 Referral Patterns of Lawyers to Occupational Therapists 37

4.3.3 Skills and Techniques Used by Occupational Therapists for Medical-Legal Consultations 38

4.3.4 Lawyers' Rating of Importance of Occupational Therapy Skills 39

4.3.5 Fees Charged by Occupational Therapists 40

CHAPTER 4: RESULTS (cont.)

4.4 Lawyers' Use of Health Professionals as Expert Witnesses

4.4.1 Referral Patterns to Other Expert Witness Consultants 40

4.4.2 Lawyers' Ratings of the Importance of Occupational Therapy Consulting Services 42

4.5 Experiences of Expert Witness Occupational Therapists

4.5.1 Rewarding and Challenging Aspects of Practice 45

4.5.2 Lawyers' Perception of the Working Relationship With Occupational Therapists 47

4.5.3 Overall Satisfaction With Occupational Therapy Services 49

4.6 Occupational Therapy Interviews 49

4.6.1 How Occupational Therapists Began Working as Medical-Legal Consultants 50

4.6.2 Medical-Legal Contributions of Occupational Therapy Expert Witnesses 50

4.6.3 Characteristics of the Occupational Therapist-Lawyer Association 51

4.6.4 Challenges of the Occupational Therapy Expert Witness 52

CHAPTER 4: RESULTS (cont.)

4.6 Occupational Therapy Interviews (cont.)

4.6.5 Recommended Professional Preparation for the Expert Witness Role 53

4.6.6 Recommended Business Preparation for the Expert Witness Role 53

CHAPTER 5: DISCUSSION AND CONCLUSIONS

5.1 Discussion 55

5.1.1 Study Methodology 55

5.1.2 Occupational Therapy: Professional and Practice Issues 56

5.1.3 Occupational Therapy: Educational and Regulatory Issues 58

5.1.4 Implications for the Occupational Therapist-Lawyer Relationship 59

5.2 Limitations of the Study 60

5.3 Suggestions for Future Research 61

5.4 Conclusions 63

REFERENCES 66

APPENDICES

APPENDIX A: Occupational Therapist Research Questionnaire and Postcard 72

APPENDIX B: Lawyer Research Questionnaire and Postcard 80

APPENDIX C: Occupational Therapist Interview and Consent Form 88

APPENDIX D: Follow-up Letters 91

APPENDIX E: Letters of Support 95

APPENDIX F: Follow-up Correspondence to Occupational Therapy Respondents 97

LIST OF TABLES

Table 4-1	Characteristics of Occupational Therapy and Lawyer Respondents	29
Table 4-2	Description of Types of Practices Among Occupational Therapy and Lawyer Respondents	31
Table 4-3	Areas of Practice of Occupational Therapy Respondents	33
Table 4-4	Areas of Practice of Lawyer Respondents	34
Table 4-5	Lawyers' Preference for Qualifications of Occupational Therapists	36
Table 4-6	Sources of Referral and Types of Medical-Legal Referrals Received by Occupational Therapists	37
Table 4-7	Professional Skills/Techniques Used by Occupational Therapists for Medical-Legal Consultations	38
Table 4-8	Lawyers' Rating of the Importance of Occupational Therapy Skills	39
Table 4-9	Fees ($) Charged by Occupational Therapy Consultants	41
Table 4-10	Number (%) of Lawyers Who Make Referrals to Other Health Professionals	42
Table 4-11	Rating of the Relative Importance of Occupational Therapy Services	44
Table 4-12	Aspects of Medical-Legal Consulting That Occupational Therapists Find Rewarding or Challenging	46

Table 4-13 Lawyer Respondents' Rating of the Essential Nature of Aspects of the Lawyer-Occupational Therapist Consultative Association 47

Table 4-14 Areas of Dissatisfaction for Lawyer Respondents When Consulting With Occupational Therapists 48

Table 4-15 Occupational Therapists' Perception of Lawyers' Satisfaction Compared to Actual Ratings of Overall Satisfaction by Lawyers 49

Table 4-16 Comparison of Age and Experience of Occupational Therapists Who Were Interviewed and Occupational Therapy Respondents Who Were Not Interviewed 50

CHAPTER 1

INTRODUCTION

With increasing frequency, Canadian occupational therapists are shifting from public to private enterprise and employment (Canadian Association of Occupational Therapists, 1996). While making this transition to private practice, individual practitioners encounter a number of professional challenges. As part of this transition, occupational therapists are often required to redefine their professional self-concept and value in the competitive market place, an environment which is foreign to the majority of practicing occupational therapists.

In the private practice environment, a new consultative relationship that has developed is an association between the occupational therapy and legal professions (Demaio-Feldman, 1987; Harris, Henry, Green, & Dodson, 1994; Kornblau, 1988; Potts & Baptiste, 1989; Wyrick & Wyrick, 1988). With increasing frequency, lawyers are accessing the skills of occupational therapists to determine a litigant's disability-related assets and liabilities (Townsend, Ryan & Law, 1990). The solicitation of the expert opinion of occupational therapists represents a philosophical shift for the legal profession which is expanding panels of experts to include other paramedical professions. Historically, the legal profession has relied largely upon the guidance of physicians for personal injury adjudication (American Medical Association, 1988; Gross, 1991).

When providing litigation support services, occupational therapists develop a unique professional and business association with their lawyer clients (Harris et al., 1994). Occupational therapists that provide consulting services to lawyers describe novel personal and professional challenges while working with this profession. This contrasts with more traditional employment settings which are typically characterized by clearly-defined institutionally-based professional roles and relationships (Casto et al., 1994;

Crepeau, 1994). As such, it is not surprising that these occupational therapy consultants might experience unexpected professional demands for which they have received minimal preparation.

The new association between occupational therapy and the legal profession has been the subject of minimal research. The purpose of this study was to examine the role of Alberta occupational therapists as expert witnesses. The personal and professional characteristics of occupational therapists providing these services were examined, as were the characteristics of lawyers who refer their clients for occupational therapy services. Service delivery patterns were explored, including the evaluation techniques employed by the occupational therapy consultants. Finally, the consultative relationship that develops between the two professional groups was examined. It was expected that the answers to these questions would provide valuable guidance to training and practicing professionals when called upon to fill this important professional role.

Chapter 2 reviews the professional literature that addresses medical-legal practice issues. Chapter 3 discusses the design, objectives and methodology of this research study. Chapter 4 presents the results of the study. In Chapter 5, the research findings are discussed, and the implications for occupational therapy and conclusions are presented. References and appendices follow.

CHAPTER 2

LITERATURE REVIEW

This chapter presents a summary of literature related to the provision of expert witness litigation support services. A general review of tort law is followed by an examination of the views of legal, medical and allied health professionals, including occupational therapists. Literature which examines the lawyer-health professional relationship is also outlined. The chapter closes with a discussion of the rationale for the study and the research questions that were examined.

2.1 Tort Law and the Expert Witness: A Historical Perspective

Tort law deals with the compensation for losses sustained by an individual as a result of a civil wrong, be it deliberate, careless or accidental in nature (Klar, 1996). Over the course of history, the testimony of expert witnesses has been relied upon to assist the judge and jury in tort law case adjudication. One of the earliest records of the use of expert opinion dates back to 1620, when professional evidence replaced a dependence on lay testimony or religious beliefs of the day (Landsman, 1995). The religious concept of divine intervention gradually yielded to judicial decisions that were based upon expert, scientific opinion. According to Klar (1996), "Canadian tort law is principally judge-made law" (p. 2).

The adversarial nature of the justice system first emerged during the 1700s and strongly influenced the court's use of expert witness evidence, often provided by physicians (Gee & Mason, 1990; Landsman, 1995). Professional testimony became subject to greater scrutiny. Expert witnesses experienced stringent reviews of their qualifications and the factual basis of their opinions. Opposing medical experts on the same case became common. By the 1800s, some medical professionals began working full

time as expert witnesses. As a result, a number of controversies began to emerge, including the professional's adoption of an advocacy role for the hiring lawyer, and the possible distortion of the fact through increased use of dueling experts.

In recent years, the tort law system relies on the guidance of an increasingly diverse body of professional experts, including occupational therapists, whose opinions are influencing judicial decisions in the calculation of a plaintiff's level of compensation (Thornton, 1995). Stringent reviews of professional credentials, an increased emphasis on cross examination techniques to test the evidence, and exposure to opposing experts are essential elements of today's legal practice (Altman, 1995; Bruce, 1992; Costigan, 1992; Elson, 1987; Finch, 1988; Lamoureux & Rudakoff, 1993; Landsman, 1995; Marlowe, 1995; McKenna, 1992; Phillips, 1985; Stewart, 1990; Thornton, 1995). According to Landsman (1995), many of these challenges are predicted to escalate in the future.

2.2 The Role of Expert Witnesses: A Legal Perspective

Much has been written by the legal profession about the use of expert witnesses (Altman, 1995; Bruce, 1992; Costigan, 1992; Elson, 1987; Finch, 1988; Lamoureux & Rudakoff, 1993; Marlowe, 1995; McKenna, 1992; Phillips, 1985; Stewart, 1990; Thornton, 1995). The majority of the literature reflects a lawyer's view of the utility of evidence provided by health care experts. There is also some literature which provides guidance for the use of expert witnesses, for example, suggestions for witness selection, preferred evaluation or documentation techniques, and, where required, techniques for the provision of trial testimony.

According to Black's Law Dictionary (1990), an expert witness is defined as "one who by reason of education or specialized experience possesses superior knowledge respecting a subject about which persons having no particular training are incapable of forming an accurate opinion or deducing correct conclusions" (p. 578). Within a legal environment, one's professional credentials do not automatically qualify an individual

practitioner to provide expert evidence to the courts (Marlowe, 1995). The expert qualification follows a process of stringent credential review by opposing lawyers (Bruce, 1992; Elson, 1987; Finch, 1988; Lamoureux & Rudakoff, 1993; Marlowe, 1995; Phillips, 1985). Once qualified, the expert witness is allowed "through his/her answers to questions...[to] assist the jury in understanding complicated and technical subjects not within the understanding of the average lay person" (Black, p. 578). As such, the expert witness assists the trier of the fact (judge or jury) by providing relevant experience and information for interpretation of the factual evidence (Bruce, 1992; Lamoureux & Rudakoff, 1993; Marlowe, 1995; Phillips, 1985).

One key role of the expert witness is to provide testimony which will assist in the quantification of losses sustained by the injured party. Legally, losses are generally ordered into two categories: pecuniary and non-pecuniary (Harris, 1991; McKenna, 1992). Pecuniary losses are monetary losses sustained by the litigant as a direct result of their injuries and typically include costs associated with unfunded health care or loss of employment income. Non-pecuniary losses, or general damages, include two sub-categories: (a) pain, suffering and loss of enjoyment of life; and (b) future costs to the client (e.g., medical costs, wage losses, altered employability). In the past, lawyers have relied largely on evidence provided by medical physicians (American Medical Association, 1988; Landsman, 1995) to define and quantify these losses. Physicians also educate the judge or jury about the nature of the client's injuries including: diagnosis, prognosis, treatment recommendations and the implications for one's lifestyle such as a person's employability.

More recently, a wide range of professional experts are being utilized to define individual losses more fully (Bruce, 1992; Gross, 1991; Thornton, 1995). According to Bruce (1992), some experts can include physicians, rehabilitation nurses, vocational or rehabilitation psychologists, home economists, accountants, economists, financial experts, industrial relations experts and actuaries. The plaintiff lawyer has the responsibility to

prove the injured party's losses, and the lawyer can contract expert opinion to help develop the case. The defence lawyer also relies upon expert witness opinion and engages opposing professionals to critique the opinions of the plaintiff's panel of experts.

Expert witness guidelines have been developed by the legal profession to educate health professionals and lawyers alike on the role and expectations of the medical-legal witness (Elson, 1987; Lamoureux & Rudakoff, 1993). Lawyers are advised to select credible experts and to adequately prepare these individuals for the rigorous, adversarial court environment. Healthcare professionals are provided with guidance by these lawyers on a range of matters including legal terminology, effective methods for reporting, release of information, fee schedules, rules of the court and successful techniques for providing court testimony. The lawyer's perspective and requirements of the legal system are reflected in these publications.

2.3 The Role of Expert Witnesses: Medical and Paramedical Perspectives

A number of physicians (Crockett, 1990; Gee, 1988; Gee & Mason, 1990; Schultz-Ross, 1993; Weintraub, 1995) have related their individual experiences serving as expert witnesses. Largely based upon personal recount, a number of common themes emerge in the literature, such as the complexity of the expert witness role, recommendations for service provision and guidelines for ethical practice.

Specific services provided by the physician expert can include diagnostic and medical treatment of the injured party, referral to other medical or paramedical practitioners, and medical assessment of the individual's impairment and associated lifestyle impact (Gee & Mason, 1990). The preparation of thorough and comprehensive medical-legal evaluations requires the production and submission of objective findings, integration of multiple data sources, and the cross validation of data sources (Crockett, 1990; Neal, 1994), all of which strengthen diagnostic procedures and one's professional

credibility. In addition, the physician may be required to provide expert witness testimony at trial.

Professional credibility and accountability emerge as significant ethical professional issues. The medical expert should serve as an objective translator of complex material and avoid assuming the role of the "hired gun", that is, offering evidence that meets the needs of the hiring lawyer and their client (Schultz-Ross, 1993). Resisting the negative, adversarial influence of court proceedings on expert witness objectivity is discussed in the literature (Gee & Mason, 1990; Weintraub, 1995). For instance, Weintraub (1995) discusses the emerging expert witness consulting business and the need for accountability of the expert. He suggests that public disclosure of the expert witness's evidence would improve accountability and notes that, at the present time "itinerant testifiers" (p. 858) remain largely undetected. This is largely compatible with the opinion expressed by members of the legal profession, who view the most effective expert as one who, in addition to a degree of professional expertise, is a credible and impartial witness (Bruce, 1992).

Like the legal profession, several medical associations have developed Position Papers which provide guidance to their membership with respect to evaluation techniques, documentation guidelines, court testimony and fee schedules (American Academy of Pediatrics, 1994; American College of Chest Physicians, 1990; Snyder, 1990). According to the Canadian Medical Association (1990), the responsibility of a physician is to serve "as a witness to assist the court in arriving at a just decision" (Code of Ethics, 1990, clause 48). In Alberta, the College of Physicians and Surgeons and the Law Society of Alberta have recently collaborated to jointly publish a document which addresses the interface between physicians and lawyers (Carter, undated). These documents address the process and ethical issues that might be encountered in this type of consulting practice. These recent publications by the medical profession are indicative of a trend towards self-regulation in the delivery of medical-legal consultations.

Physicians are beginning to articulate professionally sanctioned protocols and procedures for this area of practice.

More recently, the role of the nurse as an expert witness has also been addressed in the literature. The unique contributions of the nursing profession include an evaluation of the competent practice of a colleague, or an assessment of the nursing requirements of the injured party. Many authors address practice issues; for example, contractual arrangements with the lawyer, data collection and research, and documentation of findings (Dyke, 1989; George, 1984; Grant, 1995; Guido, 1994; Hawkins, 1993; Perry, 1992a; Perry, 1992b; Scully, 1982). Court related activities can include scrutiny of professional credentials and provision of court testimony (Easterwood & Chagnon, 1992; Nappi, 1984; Quigley, 1991; Taylor, 1982). Some authors discuss business-associated activities, for example marketing and recommended fee schedules (Perry & Vogel, 1993; Pesto, 1991). In general, this body of literature is informative and applicable to the occupational therapy experience.

It has been suggested that the association between the nurse and the lawyer might be subject to similar pressures accorded their medical colleagues. Hawkins (1993) advises nursing colleagues to assume the position of the objective expert, avoiding uncomfortable situations by informing the lawyer whether nursing opinion will support or refute the lawyer's case. Further, the nurse is cautioned to avoid conflict of interest situations when providing expert evidence; for example, providing evidence on the practices of personal associates or the institution in which they are currently or have been recently employed.

The recent entry of physical therapists in the medical-legal arena is reflected by a growing body of literature on this topic, published largely within the past decade (Brimer, 1987; Hayne, 1995; Isernhagen, 1995; McKenna, 1992; Semmler, 1983). The physical therapy expert can be called upon to give evidence regarding the treatment requirements of the injured party or the acceptable standards of physical therapy care. Further, the physical therapist might be asked to rate impairments or define the functional capacities

of the injured party, assisting the lawyer in determining pecuniary and non-pecuniary losses for the client (McKenna, 1992). Professional ethical issues, such as preserving an objective, impartial position, also have an impact on physical therapy experts (Gross, 1991). According to the College of Physical Therapists of Alberta (1991), practitioners are ethically obliged to provide requested medical-legal reports.

Finally, there is some literature which addresses the role of psychology or mental health professionals as expert witnesses for both civil and criminal law. These professionals can be called upon to provide services which can include assessment of: competency, fitness for trial, pre-injury status, post-accident vocational potential; and diagnosis of mental status or illness (Crockett, 1990; Faust & Ziskin, 1988; Paull, 1984). Crockett (1990) discusses the complexity of making determinations of mental competency. Specifically, he reviews the limited predictive validity of all data sources in projecting capacities in day-to-day functioning and cautions that conclusions in this regard have far-reaching consequences for the accident victim.

2.4 Occupational Therapists as Expert Witnesses

Within the tort system, occupational therapist experts are called upon to define the impact of an injury on the injured party's ability to function (Burghardt, Long & Shanley & Fisher, 1996; Demaio-Feldman, 1987; Kornblau, 1988; Potts & Baptiste, 1989; Wyrick & Wyrick, 1988). An objective evaluation of a client's functional capacities identifies residual abilities and limitations which can then be related to performance in activities of daily living. Specific referral requests can include: physical capacity evaluations, medical report analysis, determining future needs for adaptive equipment/home modification, evaluation of school placement requirements, and provision of data in competency, pension, and social security hearings (Brangam, 1987; Harris et al., 1994; Kornblau, 1988).

Occupational therapists employ a variety of standardized and non-standardized protocols to evaluate function (Potts & Baptiste, 1989). Historically, expert testimony in this regard has been based upon "impressions, not professional evaluations" (Demaio-Feldman, 1987, p. 590). Today, occupational therapist experts can provide an assessment of current function, as well as predicted future functional capacities, using a wide range of assessments. Occupational therapists play a valuable role in translating a diagnostic condition into functional impact. Like other professionals, the occupational therapist should provide the same service for either plaintiff or defence counsel. Thus, the source of the referral should not dictate the professional's choice of assessment approaches, data analysis, documentation, or the opinion rendered by the occupational therapist.

Beyond facing the challenge of determining functional capacities, occupational therapy practitioners also encounter ethical issues shared by other medical and para-medical professionals. It is critical that the same objective and unbiased information be provided to either plaintiff or defence lawyers. The occupational therapist must be careful to retain an independent consultant's perspective and resist any temptation or pressure to assume an advocacy role for the hiring lawyer or injured client. Further, the importance of excellent interpersonal skills for this type of consulting is emphasized (Harris et al., 1994). For example, the occupational therapist can encounter antagonistic situations where highly developed professional communication skills can be of paramount importance (Wyrick & Wyrick, 1988).

Unlike medical and other health care professions, occupational therapy is not yet defined in Black's Law Dictionary (1990), a reference source commonly used by lawyers. Occupational therapists typically find themselves in the position of defining their profession, educational credentials, skill set and domain of practice to a new consumer group of legal practitioners. For some, this is reminiscent of earlier years of practice where the field of occupational therapy was an emerging profession and practitioners

were required to regularly define their professional skills and competencies within the medical model.

Nationally and provincially, the occupational therapy profession has published Position Papers, practice standards and guidelines in recent years. However, with the exception of one set of medical-legal reporting guidelines from Ontario (Ontario Society of Occupational Therapists, 1994), there is no evidence of standards or guidelines generated by the profession to regulate or guide the practice of members in medical-legal consulting in Canada (Alberta Association of Registered Occupational Therapists, personal communication, March, 1996; Canadian Association of Occupational Therapists, personal communication, March, 1996). Recently, the American Association of Occupational Therapists has published a booklet which addresses legal issues that impact upon the occupational therapy practitioner (Burghardt et al., 1996). This includes a concise description of the role and responsibilities of the expert witness. The dearth of publications addressing this aspect of practice is reflective of the relatively novel role of occupational therapy practitioners as expert witnesses.

Thus, occupational therapists have little formal guidance by their professional associations with respect to ethical professional issues specific to this type of consulting, a salient aspect of the work that is recounted by therapists practicing within the area (Demaio-Feldman, 1987; Harris et al., 1994). Most of the literature which addresses expert witness guidelines has been generated externally by lawyers that access expert witness services and have been directed at other professional groups. Whether these legally produced guidelines are compatible with the philosophical basis of occupational therapy is a subject which has not been examined.

Few occupational therapists receive any form of training for this relatively new professional role. Several years ago, Potts and Baptiste (1989) correctly predicted that the occupational therapist's involvement with the litigation process would become more common in the future. This is particularly true in private practice (Canadian Association

of Occupational Therapists, 1996). A proactive, internally driven approach towards self-regulation and education by the occupational therapy profession seems timely and appropriate.

2.5 Interdisciplinary Relations: Healthcare Professionals and Lawyers

As a common theme among disciplines, healthcare professionals seem to agree that serving as an expert witness can be a complex, challenging position and a significant aspect of the challenge is developing a positive relationship with legal counsel (Demaio-Feldman, 1987; Harris et al., 1994). Some authors have emphasized the importance of well-developed communication skills. Indeed, the credibility of the witness is largely attributed to the talents of the expert in this regard (Bruce, 1992). Nonetheless, only a few authors have examined the factors that might contribute to the quality of the collaboration between lawyers and health professionals (Fisher & Fisher, 1982; Hancock, 1982).

Hancock (1982) discusses the relationship that develops between the legal and health counselling professions and describes the discord experienced by these two professional groups. This is attributed to various factors including different objectives, communication styles, philosophical orientation, and professional structures. Lawyers are strongly influenced by the adversarial nature of the law. In contrast, health counselling is a therapeutic service. In order to develop a cooperative relationship and foster positive collaboration, the two professions must have an understanding of each other's roles and values (Fisher & Fisher, 1982).

This new environment of practice can be expected to have an impact upon occupational therapists. Largely acculturated to a medical-paramedical association and a customary style of communication, occupational therapists can find themselves in uncharted waters in their new association with lawyers. Each discipline brings to the partnership expectations for interdisciplinary collaboration based upon their respective

traditional experiences, including norms for interdisciplinary communication. While occupational therapists are invested in client-centred practice and caring (Sachs & Labovitz, 1994), lawyers are philosophically rooted in the adversarial model of interpersonal relations. As successful associations are founded on clearly defined rules of behaviour, and process and outcome expectations (Casto et al., 1994; Crepeau, 1994; Fisher & Fisher, 1982; Hancock, 1982), it should not be remarkable that both the occupational therapist and the lawyer might experience varying degrees of satisfaction or dissatisfaction with the partnership.

2.6 Summary

The literature reviewed suggests that occupational therapy expert witnesses can find themselves in a new, demanding area of practice. Similarly, lawyers are being challenged to extend their circle of professional experts to include occupational therapy. Given the evolving nature of the occupational therapist-lawyer association, the individual practitioner's concept of the other profession is being molded "on the job" as a collective of personal experiences and insights.

2.7 Rationale For the Study

A systematic study of occupational therapy services provided for medical-legal purposes had never been undertaken, nor had the qualifications of occupational therapy practitioners that were providing these services been similarly examined. This study explored occupational therapy service delivery patterns to the legal community, including the requirements that might be unique for this consumer group.

Secondly, it was not known whether occupational therapists and lawyers shared the same perceptions about what constituted a successful professional association. Further research was required to understand the nature of this novel consulting association and was undertaken as part of this study.

It was also expected that the examination of this consulting relationship might have several other implications for both professions. Firstly, standards or guidelines for practice could be developed to assist occupational therapists in identifying the service requirements of medical-legal consulting. Educational materials could be developed to help prepare students and practicing therapists to fulfil the legal obligations of the profession. These materials could include effective communication techniques that would facilitate a positive association with legal professionals. Occupational therapists engaged in private practice could ensure that their services meet professionally-defined requirements.

Finally, it was expected that the results of this research might be useful to other allied health professionals who are being called upon with increasing frequency to provide medical-legal consulting services.

2.8 Research Objective and Questions

The objective of this study was to collect survey and interview data to address the following questions:

1. What medical-legal services are being provided by Alberta occupational therapists and what approaches are used by occupational therapists to provide these services?

2. What are the professional credentials (e.g., training, experience, expertise) of occupational therapy practitioners who provide medical-legal services? How do occupational therapists rate the adequacy of their academic preparation to provide these medical-legal consultative services?

3. What are the professional characteristics of lawyers who refer their clients for occupational therapy services? Does this group vary from lawyers who do not use occupational therapy services?

4. How do occupational therapists experience the expert witness role? What type of interdisciplinary association develops between the lawyer and occupational therapist?

5. How do lawyers rate the importance of occupational therapy consultative services compared to those provided by other professional groups? How do their ratings compare to the self-ratings of occupational therapy practitioners?

6. How satisfied are lawyers with occupational therapy consultative services? How does this rating compare to the perceptions of occupational therapists?

For comparisons between occupational therapy and lawyer respondents, two research hypotheses were developed for this study. With respect to research question 5, it was hypothesized that occupational therapists and lawyers would similarly rate the importance of occupational therapy consultative services, relative to the services provided by other professional groups. For research question 6, it was hypothesized that occupational therapists and lawyers would report similar levels of satisfaction with occupational therapy services.

CHAPTER 3

METHODS AND PROCEDURES

This chapter presents a summary of the study design and research methodology. Ethical issues are also discussed.

3.1 Study Design

Two mailed surveys and one interview were developed and used for this study. The complementary mailed surveys for occupational therapists and lawyers were distributed at the same time. These surveys collected cross-sectional and retrospective data, both descriptive and quantitative in nature.

Next, a research assistant contacted and interviewed a group of occupational therapy volunteers using a semi-structured interview. This qualitative interview provided additional data to supplement that obtained from the mailed surveys.

3.2 Subjects

Two groups of subjects were used in this study, occupational therapists and lawyers who worked in Alberta at the time of the study.

3.2.1 Occupational Therapists

In an attempt to include all Albertan occupational therapists who had served as medical-legal consultants (past or present), two methods were used to recruit subjects.

First, the private practice mailing list of the Alberta Association of Registered Occupational Therapists (AAROT) was used to obtain a list of members who had identified themselves as private practitioners ($n = 75$). All 75 private practitioners on the 1996 AAROT data base were sent a survey. This strategy was based on the assumption

that most therapists who provide medical-legal consultations would be working in private practice.

Second, subjects were recruited by advertising in AAROT's monthly newsletter, *Perspectives*. An advertisement was placed in this newsletter for two consecutive publications. All practicing and licensed occupational therapists in Alberta, including academics and occupational therapists working in any setting, would have received the newsletter. This sampling strategy helped contain the cost of mailing and recruited medical-legal providers who were not listed on the private practice list.

As the title of expert witness is a supplementary legal designation, participants were not required to be legally qualified as such.

All of the occupational therapy respondents who volunteered to be interviewed at the time of the survey were subsequently interviewed by a research assistant.

3.2.2 Lawyers

A targeted sample of lawyers who were currently practicing personal injury litigation in Alberta were selected from the membership list of the Alberta Chapter of the Canadian Bar Association and invited to participate in a mailed survey regarding their use of occupational therapy consulting services. The membership of the Edmonton and Calgary civil litigation, personal injury and insurance interest sections were included in this study, estimated at approximately 600 members by the Canadian Bar Association. As some members belonged to more than one interest section, an attempt was made to ensure that each member received only one survey questionnaire. A total of 561 lawyers received a mailed survey questionnaire.

3.3 Methods

3.3.1 Instrumentation Development

This section describes the development of the two survey questionnaires and the semi-structured interview.

3.3.1.1 Development of the Surveys

The complementary mailed surveys are included in Appendix A and Appendix B.

Item Selection The occupational therapy questionnaire contained 19 items and the lawyer questionnaire contained 18 items. Questionnaire items were drawn from the documented experiences of expert witness occupational therapists and those lawyers who have used health care professionals as expert witnesses.

To address the 1st, 2nd, 3rd, 5th and 6th research questions, occupational therapists and lawyers were surveyed about professional qualifications, medical-legal service delivery and business practice issues. Data was also gathered to address the relative importance of occupational therapy services, and perceived or actual consumer satisfaction with those services. Factors that influenced the consulting relationship were also explored with respondents.

Service referral items solicited data regarding pattern of referral, categories of referral and professional techniques employed by occupational therapy practitioners. Professional qualification items included questions regarding the actual or preferred qualifications of the occupational therapy expert witness, such as academic background, work experience, specialized training and expert witness status. Business practices surveyed included employment status and environment, and professional fee schedules. Selected items were consistent with occupational therapy literature (Demaio-Feldman, 1987; Harris et al., 1994; Kornblau, 1988; Potts & Baptiste, 1989; Townsend, Ryan & Law, 1990; Wyrick & Wyrick, 1988) and the writing of legal authors (Altman, 1995; Bruce, 1992; Costigan, 1992; Elson, 1987; Finch, 1988; Lamoureux & Rudakoff, 1993;

Marlowe, 1995; McKenna, 1992; Phillips, 1985; Stewart, 1990; Thornton, 1995). Items addressing professional qualifications were consistent with the data bases of the Alberta Association of Registered Occupational Therapists (1995) and the Canadian Association of Occupational Therapists (1996). Business-related items were drawn from other allied health authors (Perry & Vogel, 1993).

The level of measurement for all items on both questionnaires was either categorical or continuous with four exceptions. On the lawyer questionnaire, the second item requested respondents to describe their understanding of occupational therapy services. On both the occupational therapy and lawyer questionnaires, the last item elicited additional comments from the respondents. Finally, on the occupational therapy questionnaire, the second last item asked respondents to convey their advice to occupational therapists "embarking on medical-legal consultation".

A 10-centimetre visual analogue scale (VAS) was used for one item to measure satisfaction levels and designed for subsequent comparative analysis. Visual analogue scales are widely used in healthcare and provide a ratio scale measurement of subjective experience. The reliability and validity of VAS measures have been documented by numerous researchers (Karoly & Jensen, 1989; Melzack & Katz, 1992; Price, Harkins & Baker, 1987). The VAS rating was administered in the standard clinical manner. The respondent was instructed to place an 'X' on the line. The respondent's score was measured in centimetres to one decimal point. When measuring, the left end point of the scale ('very dissatisfied') represented the zero point. Therefore, higher VAS ratings represented higher levels of satisfaction.

Survey Design The overall design and administration of the occupational therapy and lawyer surveys was consistent with the Total Design Method (TDM) (Dillman, 1978). Based upon Social Exchange Theory principles, Dillman recommends maximizing the respondent's rewards, minimizing their costs and establishing trust with the respondent. In other research, this total design approach increased the average return rate

for surveys to 77% (Anema & Brown, 1995). TDM reward strategies included a signed cover page, personalization of survey materials, inclusion of open-ended questions to promote an atmosphere of personal consultation, and rewarding the respondent for their valuable input (e.g., thanking the respondents in advance, forwarding a summary of results). Costs to the respondent were reduced by preparation of a clear, concise survey, avoidance of sensitive or anxiety-provoking survey items, valuing the respondent's contributions, protecting confidentiality, and eliminating monetary costs to the respondent (e.g., provision of stamped, addressed envelopes). Affiliation of the project with established organizations was used to establish trustworthiness. Survey materials were published on university bond and accompanied by letters of support from AAROT or the Canadian Bar Association. Finally, survey materials were assembled according to Dillman's recommendations. These survey design strategies, directed at increasing return rates, were consistent with the recommendations of other researchers (Gordon & Stokes, 1989; Streiner & Norman, 1995; Torabi, 1991; Young Barhyte, Redman & Bednash, 1996).

Content and Face Validation Process The surveys were reviewed for content validity by a panel of experts consisting of three occupational therapists and three lawyers. The occupational therapists had extensive experience in service evaluation, administration, legally-oriented professional issues and community-based occupational therapy service delivery. The three lawyers had experience working with occupational therapists. These experts met together to review the surveys and recommended revisions to the survey prior to distribution. Amendments were consistent with the consensus of the reviewing panel. Members of the review panel were excluded from subsequent participation in the study.

3.3.1.2 Development of the Interview Questionnaire

A semi-structured interview (see Appendix C) was developed to explore the relationship issues between occupational therapists and lawyers.

The interview consisted of 15 questions that addressed the 2nd, 4th and 6th research questions. Questions were based upon the experiences of occupational therapists and other allied health professionals who have documented their individual experiences serving as experts (Demaio-Feldman, 1987; Fisher & Fisher, 1982; Hancock, 1982; Harris et al., 1994; Kornblau, 1988; Potts & Baptiste, 1989; Wyrick & Wyrick, 1988). Questions 1 to 3 were used to build rapport with the participant. Questions 4 to 11 and item 13 explored the quality of the relationship with lawyers. Question 12 addressed academic and professional preparation issues. Questions 14 and 15 were used for closure purposes.

This interview questionnaire was also reviewed by the same six expert panel members for content and face validity.

3.3.2 Survey Administration

Prior to distribution, questionnaires were numerically coded to allow for follow-up. Respondents were asked to return the questionnaires two weeks from the date of mailing. Follow-up letters (see Appendix D) were sent on the due date in order to maximize the rate of return. A second reminder was sent to those who had not returned their questionnaire three weeks after the mailing date.

Letters of support from the Alberta Association of Registered Occupational Therapists and from the Canadian Bar Association were included with the surveys of each respective professional group (see Appendix E). A stamped postcard was also included in the survey materials. Using this postcard (see Appendix A), occupational therapy subjects indicated their willingness to participate in the subsequent interview or to request a summary of the study results. Lawyers received a similar postcard, but only

for the purpose of requesting a summary of results (see Appendix B). The stamped postcards were returned separately to protect the confidentiality of the survey respondent. All returned survey materials were received by a research assistant. These steps ensured that the principle researcher, a private practitioner employed in a similar capacity, remained blind to each subject's identity.

As prearranged with the Canadian Bar Association (CBA), a proportion of Edmonton (17.2%) and Calgary (42.4%) surveys were distributed via the CBA's internal courier mail system. Other surveys were sent by regular mail. The method of distribution was dictated by the association's administrative methods. All occupational therapy surveys were sent by regular mail service.

3.3.3 Interviews With Occupational Therapy Respondents

Eighteen occupational therapy respondents who volunteered to participate were interviewed. These interviews were conducted by a research assistant who was trained by the principal investigator. The research assistant was also an occupational therapist, but impartial to the area of study.

A total of fifteen occupational therapists were interviewed in person and these interviews were audiotaped. Three interviews were conducted by telephone because in-person interviews were not feasible. Telephone interviews were not recorded, but they were transcribed by the research assistant. The interviews were approximately one hour in duration. All subjects provided informed consent prior to the interview (see Appendix C). All interviewees completed the interview process. Taped interviews were clerically transcribed in full. The transcribed interviews were then reviewed by the research assistant and the thesis supervisor. Any information that revealed the interviewee's identity was eliminated. These steps helped ensure that the principle researcher was blind to the identity of the interviewees.

3.4 Ethical Considerations

For the mailed survey, an individual's consent was assumed by voluntary completion of the mailed survey. For the interview, informed consent was obtained from subjects. Interview subjects were advised that responding to any questions was optional and they could withdraw from the study at any point.

All surveys were returned to the Department of Occupational Therapy, University of Alberta. Written surveys, field notes, audio tapes and transcribed materials are stored in locked files at the University of Alberta, and in accordance with University policy, will be secured for a five-year period following the completion of the study.

There was no personal risk to participants in this study. On a business level, disclosure of business matters may have been perceived as somewhat threatening to some private practitioners. Participants were given the option of disclosing sensitive information. Subjects were also reassured that this information would be used exclusively for the purposes of this research study and their personal identities would be held in confidence in any dissemination of the study results. Upon completion of the interviews, the thesis supervisor and research assistant sent a letter to each interviewee (see Appendix F). This letter described the steps that were taken to ensure that their identities would be held in confidence.

3.5 Data Analysis

3.5.1 Descriptive Analysis

Data was analyzed using the SPSS software (Bailey, 1991).

Quantitative survey data was summarized and analyzed to describe the characteristics of the occupational therapy and lawyer samples. Selected measures were appropriate to the data type: nominal, ordinal or metric (interval, ratio). Frequency counts, percentage calculations, measures of central tendency and distribution of the data were analyzed. Characteristics (such as educational background, work experience,

practice specialty and employment status) of occupational therapists providing medical-legal expert witness services were examined. Practice-related data was similarly analyzed and included referral patterns, professional techniques and financial aspects of practice. Characteristics of lawyers using occupational therapy consultative services were similarly examined. Data analysis included practice specialty, employment status, referral requests and referral patterns. The characteristics of lawyers who do not use occupational therapy consultative services were similarly examined.

Descriptive data for occupational therapists and lawyers was analyzed and interpreted, taking into consideration survey return rates.

3.5.2 Other Analyses

Between- and within-group comparisons were conducted using appropriate parametric and non-parametric statistics.

A Mann-Whitney U test was used to compare the occupational therapists' and lawyers' ratings of the relative importance of occupational therapy consulting services. From the original eight categories of professionals (item 13 on the lawyer's survey and item 16 on the occupational therapy survey), data were collapsed into three categories of medical, allied health and counselling professionals. This analysis addressed research question 5.

Independent sample t tests were used to compare several areas. For occupational therapists, the mean age and years of experience of providers and non-providers were compared. For the lawyers, similar analyses were conducted for users and non-users of occupational therapy services; areas of practice were also analyzed. Finally, occupational therapy and lawyer groups were compared on the mean satisfaction ratings with occupational therapy services. This last analysis was used to address question 6.

3.5.3 Qualitative Analyses

Qualitative data gathered from the survey and from the semi-structured interviews was analyzed inductively by identifying emerging themes (Patton, 1990). Specific areas of interest included: patterns of interpersonal relationships between occupational therapists and lawyers and the factors that contributed to the occupational therapist's ratings of role satisfaction. As well, the occupational therapist's definition of professional self-concept and professional status in the medical-legal field was examined. Emerging themes in the data were coded and analyzed using frequency counts (Bailey, 1991).

CHAPTER 4

RESULTS

This chapter presents the results of the surveys mailed to occupational therapist and lawyer respondents. The findings of the occupational therapy interviews are also presented.

4.1 Mailed Surveys

4.1.1 Return Rate of Occupational Therapist Respondents

Surveys were mailed by Canada Post to 78 occupational therapists. A total of 5 surveys were returned undelivered and therefore deleted from the sample, resulting in a total sample size of 73. The rate of return for the initial mailout was 37% (27 of a total of 73). After the first follow-up letter was sent, the rate of return was increased to 59% (43 of 73 surveys). After the second follow-up letter, the final rate of return was 62 of 73 surveys (85%).

4.1.2 Return Rate of Lawyer Respondents

Surveys were mailed to a total of 561 lawyers. For 41 Edmonton lawyers and 137 Calgary lawyers, the courier mail service of the Canadian Bar Association (CBA) was used. The other surveys (Edmonton: n = 197; Calgary: n = 186) were sent by Canada Post. The structure of the CBA's mailing list dictated the method of mailing. Some CBA members were listed by standard street address while others were listed by a courier address.

Twenty-eight surveys were returned undelivered and one survey was returned blank. In total, 29 lawyer subjects were deleted from the sample. Following the initial mailout, 17% of the lawyers responded and returned the surveys (n = 92). After the first

follow-up letter, the rate of return increased to 20% (n = 107). Second copies of the survey were requested and sent to 13 lawyers. Following the second follow-up letter, 141 of a possible 532 surveys were returned, resulting in a 26.5% final rate of return.

4.2 Characteristics of Occupational Therapy and Lawyer Respondents

4.2.1. General Characteristics of Respondents

Of the 62 occupational therapists who responded to the survey, 33 (53%) had received requests to provide medical-legal services. Twenty-nine of those therapists (88%) chose to provide these services. For those occupational therapists that declined legal referrals, the cited reasons included insufficient time, lack of experience or inadequate training for this type of practice, limited access to test facilities or equipment, and concerns that the work might be too stressful.

Table 4-1 contains a comparison of gender distribution, age and years of experience between occupational therapists who provided medical-legal services and those who did not. The two groups did not differ in age or years of professional experience. Nearly 80% of medical-legal service providers and 97% of non-providers reported having an undergraduate degree or diploma in occupational therapy. A master's degree in occupational therapy or other fields of study was held by over 20% of providers and nearly 10% of non-providers. One respondent (non-provider) reported doctoral level credentials. The two groups also did not differ in education level.

Of the 141 lawyers that responded to the survey, 89 (63%) had referred their clients to occupational therapists for medical-legal services between July 1, 1995, and June 30, 1996. Reasons cited for not using occupational therapy services included the inappropriateness of legal cases, no requirements for this type of expertise, limited understanding of occupational therapy services, and a perception that occupational therapists were too subjective or plaintiff-sympathetic. Of the 116 lawyer respondents that offered a definition of occupational therapy, 113 (97%) provided a definition that

demonstrated an understanding of the functional expertise of occupational therapists in evaluating self-care, leisure, and in particular, productivity capacities. Only 3 respondents reported minimal or no understanding of occupational therapy.

Lawyers who used occupational therapy services and those who did not use occupational therapy services did not differ in mean age or years of experience (Table 4-1). Of those responding to the educational credential item, the majority of users (96 %) and non-users (83%) reported having a LL.B. degree. A graduate degree (LL.M.) was held by only 2% to 4% of users and non-users.

Table 4-1

Characteristics of Occupational Therapy and Lawyer Respondents

Characteristic	Occupational therapists							Lawyers						
	Providers[a]		Non-providers[b]		*t*	(*df*)	*p*	Users[c]		Non-users[d]		*t*	(*df*)	*p*
Gender	*n* = 28		*n* = 32					*n* = 88		*n* = 43				
	f	(%)	*f*	(%)				*f*	(%)	*f*	(%)			
Male	5	(17.2)	2	(6.1)				65	(73.0)	24	(45.3)			
Female	23	(79.3)	30	(90.9)				23	(25.8)	19	(35.8)			
Age	*n* = 27		*n* = 31					*n* = 84		*n* = 40				
	M	(*SD*)	*M*	(*SD*)				*M*	(*SD*)	*M*	(*SD*)			
	37.17	(7.06)	39.52	(6.36)	-3.24	(56)	.184	38.49	(6.32)	38.25	(8.71)	.17	(122)	.863
Years of experience	*n* = 29		*n* = 32					*n* = 89		*n* = 45				
	M	(*SD*)	*M*	(*SD*)				*M*	(*SD*)	*M*	(*SD*)			
	13.0	(7.85)	15.7	(6.98)	-1.42	(59)	.160	11.65	(6.35)	9.64	(8.35)	1.55	(132)	.123

Note. [a]Occupational therapists who provide medical-legal services. [b]Occupational therapists who do not provide medical-legal services. [c]Lawyers who use occupational therapy medical-legal services. [d]Lawyers who do not use occupational therapy medical-legal services.

4.2.2. Types of Occupational Therapy Practice

Table 4-2 summarizes the practice characteristics of occupational therapy and lawyer respondents. The majority of occupational therapy respondents in both groups were self-employed. Occupational therapists who provided medical-legal consultations worked in small firms with a mean 1.67 (*SD* 3.92) occupational therapists in their practice. These providers had worked as medical-legal consultants for a mean 3.52 years (*SD* 2.76) and reported receiving a mean of 17.73 medical-legal referrals per year (*SD* 27.8). On average, for occupational therapists who provided medical-legal consultations, this type of work constituted 38% of their total work.

The areas of practice of occupational therapy respondents were examined. From a total of 8 areas of practice (Table 4-3), significant differences were noted in 2 practice areas for providers and non-providers. Significantly more medical-legal service providers practiced in the areas of vocational rehabilitation and community/health promotion compared to occupational therapists who did not provide medical-legal consultations.

Over 40% of medical-legal providers reported receiving qualification as expert witnesses in the Alberta court system. Three occupational therapists (10%) were also qualified as expert witnesses in other provinces. Respondents were first qualified as expert witnesses between the years of 1989 to 1996; 50% of these occupational therapists were qualified in 1995 or 1996. Overall, occupational therapists were rarely called to testify in court, appearing a maximum of twice per year.

Table 4-2

Description of Types of Practices Among Occupational Therapy and Lawyer Respondents

	Occupational therapists				Lawyers			
	Providers[a] (n = 29)		Non-providers[b] (n = 33)		Users[c] (n = 89)		Non-users[d] (n = 53)	
Employment status	f	(%)	f	(%)	f	(%)	f	(%)
Self-employed	24	(82.8)	25	(75.8)				
Academic/ Researcher	2	(6.9)	1	(3.0)				
Staff therapist	6	(20.7)	9	(27.3)				
Community/ Other[e]	6	(20.7)	8	(24.2)				
One-person law office					6	(6.7)	6	(11.3)
Partner					41	(46.1)	10	(18.9)
Junior associate					11	(12.4)	14	(26.4)
Senior associate					25	(28.1)	8	(15.2)
Other					6	(6.7)	6	(11.3)

(table continues)

	Occupational therapists						Lawyers					
	Providers[a] (n = 29)			Non-providers[b] (n = 33)			Users[c] (n = 89)			Non-users[d] (n = 53)		
	M	(*SD*)	[range]	*M*	(*SD*)	[range]	*M*	(*SD*)	[range]	*M*	(*SD*)	[range]
Size of firm or practice[f]	1.67	(3.92)	[0-20]	6.19	(10.42)	[0-4]	33.38	(46.12)	[1-200]	31.68	(42.13)	[1-200]
Years as a medical-legal consultant	3.52	(2.76)										
Number of medical-legal referrals/year	18.73	(27.8)										
Percentage of work that is medical-legal	38.3	(41.61)										

Note. Categories are not mutually exclusive.

[a]Occupational therapists who provide medical-legal services. [b]Occupational therapists who do not provide medical-legal services. [c]Lawyers who use occupational therapy medical-legal services. [d]Lawyers who do not use occupational therapy medical-legal services. [e]Includes home care, career development, school/health consulting, contract employment. [f]Defined by the number of staff with the same professional designation.

Table 4-3

Areas of Practice of Occupational Therapy Respondents (n = 62)

Area of practice	Providers[a] (n = 29) f	(%)	Non-providers[b] (n = 33) f	(%)	U	p
Administration[c]	1	(3.4)	1	(3.0)	196.5	.267
Geriatrics	8	(27.6)	6	(18.2)	433.5	.381
Community/Health Promotion[d]	18	(62.1)	7	(21.2)	283.0	.001*
Mental health[e]	2	(6.9)	2	(6.1)	422.5	.442
Pediatrics[f]	10	(34.5)	12	(36.4)	383.0	.663
Physical medicine[g]	12	(41.4)	9	(27.3)	385.5	.366
Practice specialization(s)[h]	11	(37.9)	7	(21.2)	389.5	.173
Vocational rehabilitation[i]	17	(58.6)	8	(24.2)	277.0	.010*

Note. Categories are not mutually exclusive.

[a]Occupational therapists who provide medical-legal services. [b]Occupational therapists who do not provide medical-legal services. [c]Includes regulatory. [d]Includes ergonomics. [e]Includes psychiatry. [f]Includes school-based practice. [g]Includes neurology, orthopedics, and rheumatology. [h]Includes burns, cardiology, dysphagia, hands, pain conditions, palliative, and seating. [i]Includes medical-legal and disability management.

*$p \leq .01$.

4.2.3 Lawyers' Practice Characteristics

The majority of lawyers who used occupational therapy were employed as partners or senior associates with a mean firm size of 33.38 (*SD* 46.12) lawyers (Table 4-2). The practice characteristics of lawyer respondents are reported in Table 4-4. No significant differences in area of practice were noted between those who used occupational therapy services and those who did not. Consistent with the professional literature, more plaintiff lawyers used occupational therapy services, relative to those practicing as defense counsel.

Table 4-4

Areas of Practice of Lawyer Respondents

	Users[a] (*n* = 89)		Non-users[b] (*n* = 53)				
	Proportion of practice						
Area of practice	*M*	(*SD*)	*M*	(*SD*)	*t*	(*df*)	*p*
Plaintiff	66.93	(35.28)	58.13	(41.81)	1.23	(126)	.220
Defense	46.90	(34.43)	49.70	(40.06)	-.35	(92)	.724
Products Liability	8.91	(12.67)	4.19	(5.63)	1.29	(44)	.205
Medical Malpractice	13.00	(20.81)	11.33	(17.12)	.30	(66)	.762
Personal Injury	66.60	(31.11)	65.22	(34.94)	.22	(117)	.830
WCB	5.24	(7.07)	4.92	(9.67)	.14	(51)	.893
Insurance	29.05	(31.53)	40.95	(34.93)	-1.45	(75)	.151
Other	8.95	(13.90)	11.00	(11.92)	-.35	(25)	.732

Note. Groups are not mutually exclusive. WCB = Workers' Compensation Board.

[a]Lawyers who use occupational therapy medical-legal services. [b]Lawyers who do not use occupational therapy medical-legal services.

4.3 Lawyers' Utilization of Occupational Therapy Services

4.3.1 Lawyers' Preference for Occupational Therapist Qualifications

Table 4-5 summarizes lawyer respondents' preferred occupational therapy qualifications. Nearly 63% (n = 56) of lawyers preferred that occupational therapy consultants have postgraduate degrees. Almost 24% (n = 21) were satisfied with undergraduate credentials. Nearly 78% (n = 69) of lawyers preferred occupational therapists to have 6 or more years of experience and over 75% (n = 67) preferred occupational therapists to be clinical specialists. Over 80% of lawyers stated that they preferred or considered that it was essential that occupational therapy consultants had been previously court-qualified as expert witnesses. Considerably fewer lawyers preferred occupational therapists to have research experience (21.3%, n = 19) and teaching experience (29.2%, n = 26), but over half the lawyers (55%, n = 49) stated a preference for occupational therapists to have published articles.

Table 4-5

Lawyers' Preference for Qualifications of Occupational Therapists

Preferred qualification	*f*	(%)
Education		
B.Sc.	21	(23.6)
Graduate education[a]	56	(62.9)
Years of experience		
0 - 5 years	3	(3.4)
6 - 10 years	55	(61.8)
11 years or more	14	(15.7)
Previously qualified as an expert witness		
Essential	21	(23.6)
Preferred	61	(68.5)
Optional	4	(4.5)
Published articles		
Essential	2	(2.2)
Preferred	47	(52.8)
Optional	35	(39.3)
Teaching experience	26	(29.2)
Research skills	19	(21.3)
Clinical specialist	67	(75.3)
Specialized training/experience	3	(3.4)

Note. [a]Includes Masters or Doctoral credentials.

4.3.2 Referral Patterns of Lawyers to Occupational Therapists

On average, lawyers referred 3.89 (*SD* = 5.19, range: 0 - 40) cases per year to occupational therapy consultants. This represented 15% of their total clientele.

Table 4-6 presents the source and types of referrals received by occupational therapists. The most frequent requests were for functional capacity evaluations (72%), homemaking evaluations (38%), cost of future care assessments (24%) and work site evaluations (21%). More often, referrals were received from plaintiff lawyers.

Table 4-6

Sources of Referral and Types of Medical-Legal Referrals Received by Occupational Therapists (n = 29)

	Never		Occasionally		Frequently/Always	
	f	(%)	*f*	(%)	*f*	(%)
Source of referral						
Plaintiff	2	(6.9)	7	(24.1)	14	(48.3)
Defense	4	(13.8)	12	(41.4)	5	(17.2)
Actuary	7	(24.1)	3	(10.3)	0	
Court	7	(24.1)	2	(6.9)	0	
Insurance	4	(13.8)	9	(31.0)	9	(31.0)
Vocational counsellor	4	(13.8)	8	(27.6)	1	(3.4)
Other sources	3	(10.3)	5	(17.2)	4	(13.8)
Type of referral requests						
Cost of future care	3	(10.3)	8	(27.6)	7	(24.1)
FCE[a]	1	(3.4)	4	(13.8)	21	(72.4)
Work site evaluation	1	(3.4)	12	(41.4)	6	(20.7)
Vocational assessment	1	(3.4)	7	(24.1)	3	(10.3)
Homemaking evaluation	1	(3.4)	7	(24.1)	11	(37.9)
Case consultation	1	(3.4)	15	(51.7)	3	(10.3)
Report critique	2	(6.9)	7	(24.1)	4	(13.8)
Leisure assessment	4	(13.8)	5	(17.2)	1	(3.4)

Note. [a]Functional capacity evaluation.

4.3.3 Skills and Techniques Used by Occupational Therapists for Medical-Legal Consultations

The variety of professional skills and techniques used by occupational therapists for medical-legal consultations are summarized in Table 4-7. More than 93% of respondents reported using functional assessment skills. A range of physical examination, psycho-social assessments and pathology-specific techniques were also used by providers. More than 65% of respondents used techniques to evaluate maximal voluntary effort, techniques often used to validate sincerity of effort during testing.

Table 4-7

Professional Skills/Techniques Used by Occupational Therapists for Medical-Legal Consultations (n = 29)

Skill/Technique	f	(%)
Functional assessments	27	(93.1)
Interviews	26	(89.7)
Physical examination	24	(82.8)
ADL evaluations	23	(79.3)
Home visits	23	(79.3)
Hand dexterity testing	22	(75.9)
Pain evaluation	20	(69.0)
Maximum voluntary effort	19	(65.5)
Work site evaluations	18	(62.1)
Mental status testing	16	(55.2)
Psycho-Social evaluations	13	(44.8)
Work samples	10	(34.5)
Psychometric testing	8	(27.6)
Other	3	(10.3)

Note. Groups are not mutually exclusive. ADL = Activities of Daily Living.

4.3.4 Lawyers' Rating of Importance of Occupational Therapy Skills

Lawyers who used occupational therapy consulting services were asked to rate the importance of the skills of occupational therapists (Table 4-8). According to lawyer respondents, the ability of occupational therapists to evaluate functional capacities and the lifestyle impact of disease or injury was very important or essential. Lawyers also considered the understanding of medical documentation and the identification of performance-enhancing measures were important skills for occupational therapists to have. Interestingly, the holistic nature of occupational therapy training or the counselling skills of practitioners were considered of lesser importance.

Table 4-8

Lawyers' Rating of the Importance of Occupational Therapy Skills

	Not required		Important		Very important		Essential	
	f	(%)	*f*	(%)	*f*	(%)	*f*	(%)
Evaluation of the lifestyle impact of medical impairment ratings	1	(1.1)	9	(10.1)	28	(31.5)	45	(50.6)
Functional evaluation skills	2	(2.2)	7	(7.9)	27	(30.3)	45	(50.6)
Skills in enhancement of functional abilities	1	(1.1)	25	(28.1)	33	(37.1)	22	(24.7)
Well-developed interpersonal and counselling skills	6	(6.7)	38	(42.7)	34	(38.2)	4	(4.5)
Understanding of medical terminology and documents	0		22	(24.7)	28	(31.5)	34	(38.2)
Holistic training in disease and disability	41	(46.1)	29	(32.6)	11	(12.4)	2	(2.2)

4.3.5 Fees Charged by Occupational Therapists

Table 4-9 lists the fees charged by occupational therapy consultants. Hourly rates for professional and court-related services were provided by the majority of respondents. Two occupational therapists commented that they were reluctant to provide flat "fee-for-service" rates to referral sources; for example, having a precise charge to provide a functional capacity evaluation.

More than 84% (n = 43) of lawyers considered the fees charged by occupational therapists as reasonable. Almost 16% (n = 8) of respondents considered fees to be unreasonable. Six lawyers specifically commented that occupational therapy evaluations were too expensive to be requested indiscriminately. Two lawyers indicated that some occupational therapists charge exorbitant fees and suggested that some exploitation by healthcare professionals exists. Seven lawyers indicated that they were unaware of the fee schedule of occupational therapists.

4.4 Lawyers' Use of Health Professionals as Expert Witnesses

4.4.1 Referral Patterns to Other Expert Witness Consultants

Table 4-10 lists the lawyers' use of other medical and healthcare consultants as expert witnesses. The majority of lawyers reported using family doctors (93%) and medical specialists (96%). More than 70% of lawyers noted using allied health professionals in physical therapy, psychology and vocational counselling.

Table 4-9

Fees ($) Charged by Occupational Therapy Consultants

Fee category	*M* ($)	*SD*	Range ($)
Hourly rate: Professional services[a]	74.60	(23.07)	40.00 - 120.00
Hourly rate: Court-related services[b]	91.79	(25.35)	50.00 - 150.00
Daily rate[c]	600.00		
File review[c]	450.00	(212.13)	300.00 - 600.00
Work site evaluation[d]	500.00	(216.51)	250.00 - 1000.00
Leisure assessment[e]	500.00		
Report critique[c]	550.00	(353.55)	300.00 - 800.00
Homemaking evaluation[f]	667.50	(408.86)	250.00 - 1500.00
Case consultation[g]	748.75	(850.98)	100.00 - 2000.00
Functional capacity evaluation[h]	794.55	(370.17)	450.00 - 1650.00
Vocational assessment[i]	1016.67	(575.18)	450.00 - 1600.00
Reporting fee[e]	1650.00		
Cost of future care evaluation[j]	1960.00	(856.15)	800.00 - 3000.00

Other fees charged	Frequency	(%)
Travel	9	(31.0)
Disbursements	6	(20.7)

Note. Fees are quoted in Canadian dollars.

[a] $n = 21$. [b] $n = 12$. [c] $n = 2$. [d] $n = 9$. [e] $n = 1$. [f] $n = 8$. [g] $n = 4$. [h] $n = 11$. [i] $n = 3$. [j] $n = 5$

Table 4-10

Number (%) of Lawyers Who Make Referrals to Other Health Professionals

Other health profession	*f*	(%)
Family doctors	83	(93.3)
Medical specialists	85	(95.5)
Physical therapists	68	(76.4)
Psychologists	75	(84.3)
Nurses	18	(20.2)
Vocational counsellors	66	(74.2)
Biomechanical engineers	7	(7.9)
Accident reconstructionists	2	(2.2)
Economists/Actuarial consultants	19	(21.3)
Dental experts	4	(4.5)
Chiropractors	3	(3.4)
Massage therapists	1	(1.1)

4.4.2 Lawyers' Ratings of the Importance of Occupational Therapy Consulting Services

Occupational therapists and lawyers were asked to rate the importance of occupational therapy services compared to services provided by other consultants. Eight categories were collapsed into three categories (medical, allied health and counselling professional), and the ratings of importance were analyzed using nonparametric statistics (Mann-Whitney *U*).

The results are listed in Table 4-11. Lawyers considered that the medical profession provided a more important medical-legal service, relative to occupational therapy. Lawyers also considered that counselling professionals provided more important services. Their view contrasted with the opinion of occupational therapists who reported a more equal rating of the medical-allied health association. These differences were statistically significant for both the medical and counselling professional categories.

In contrast, lawyers rated occupational therapy services as more important, relative to other allied health professionals. Again, this contrasted with the opinion of occupational therapists who viewed their allied health colleagues as equally important as themselves. This difference in rating was also statistically significant.

Table 4-11

Rating of the Relative Importance of Occupational Therapy Services

Profession	Not as important as OT				Equally as important as OT				More important than OT					
	OT		Lawyers		OT		Lawyers		OT		Lawyers			
	f	(%)	*f*	(%)	*f*	(%)	*f*	(%)	*f*	(%)	*f*	(%)	*U*	*p*
Medical professions[a]	nil		nil		16	(64.0)	11	(13.3)	9	(36.0)	72	(86.7)	511.0	.000
Allied health professions[b]	15	(62.5)	65	(84.4)	9	(37.5)	11	(14.3)	nil		1	(1.3)	726.0	.030
Counselling professions[c]	nil		7	(9.2)	23	(100.0)	45	(59.2)	nil		24	(31.6)	678.5	.046

Note. OT = Occupational Therapy.

[a]Includes family doctors and medical specialists. [b]Includes physical therapy, nurses, chiropractors, and massage therapists. [c]Includes psychologists and vocational counsellors.

4.5 Experiences of Expert Witness Occupational Therapists

4.5.1 Rewarding and Challenging Aspects of Practice

Occupational therapists were asked to identify the rewarding and challenging aspects of medical-legal practice (see Table 4-12). All occupational therapists considered themselves adequately trained as occupational therapists for this area of practice. The majority of consultants described that this type of work challenged their professional abilities (86%) and encouraged ongoing professional development (59%). Flexible conditions of employment (62%) and levels of remuneration (45%) were also viewed as favourable aspects of work.

A lack of training for medical-legal practice was cited as a difficult aspect of practice by 35% of respondents. Others noted that several business-related or consulting-related aspects of the work added challenge; these are summarized in Table 4-12. Several respondents noted that the medical domination of the medical-legal field was a taxing aspect of practice, as was the thorough, often critical examination of written documentation.

Table 4-12

Aspects of Medical-Legal Consulting That Occupational Therapists Find Rewarding or Challenging

	f	(%)
Rewarding aspects of practice		
Challenges professional abilities	25	(86.2)
Encourages professional development	17	(58.6)
Offers flexible working conditions	18	(62.1)
Monetary rewards	13	(44.8)
Elevated professional status	7	(24.1)
Professional contact with lawyers	7	(24.1)
Appreciative referral sources	9	(31.0)
Appreciative patients or clients	8	(27.6)
Trial appearances	4	(13.8)
Challenging aspects of practice		
Lack of training for medical-legal practice	10	(34.5)
Documentation requirements	7	(24.1)
Interpersonal relations with lawyers	5	(17.2)
Explaining the role of OT	5	(17.2)
Lack of role models	4	(13.8)
Competition with other OTs	4	(13.8)
Inadequate OT training	0	
Trial appearances	4	(13.8)
Remaining objective	6	(20.7)
Receiving timely payment	5	(17.2)
Other difficulties[a]	13	(44.8)

Note. Groups are not mutually exclusive. OT = Occupational Therapy.

[a]Includes medical domination of the area, thorough examination of work for flaws, limited information on evaluation outcome, lack of standardized [occupational therapy] measures, high level of accountability, and limited funding of community treatment programs.

4.5.2 Lawyers' Perception of the Working Relationship With Occupational Therapists

Lawyer respondents were asked to rate the importance of various aspects of the consulting relationship with occupational therapists and the results are summarized in Table 4-13. None of the items were rated as "absolutely essential." The majority of respondents (88%) indicated that receiving objective functional capacity data and clearly stated opinions regarding functional capacities were "somewhat essential". Clearly documented results (80%) that are coordinated with medical data (75%) were also important to the majority of respondents. Ensuring that all referral questions have been answered also emerged as an important aspect of consultation (70%). Provision of pre-evaluation, ongoing and post-evaluation consultations were also important to many lawyers, suggesting that open lines of communication were an important aspect of this type of consultative practice.

Table 4-13

Lawyer Respondents' Rating of the Essential Nature of Aspects of the Lawyer-Occupational Therapist Consultative Association

	Not essential		Somewhat essential		Absolutely essential	
	f	(%)	*f*	(%)	*f*	(%)
Provides pre-evaluation consultation	47	(52.8)	34	(38.2)	0	(0)
Coordinates findings with medical findings	13	(14.6)	67	(75.3)	0	(0)
Provides post-evaluation consultation	34	(38.2)	47	(52.8)	0	(0)
Provides objective findings of functional capacities	1	(1.1)	78	(87.6)	0	(0)
Supports findings with research	43	(48.3)	35	(39.3)	0	(0)
Clearly states opinion regarding functional abilities	1	(1.1)	78	(87.6)	0	(0)
Documents results clearly, comprehensively	8	(9.0)	71	(79.8)	0	(0)
Answers all referral questions	18	(20.2)	62	(69.7)	0	(0)
Discusses findings during evaluation process	43	(48.3)	37	(41.6)	0	(0)
Is open to negotiation	22	(24.7)	2	(2.2)	0	(0)

Table 4-14 lists areas of dissatisfaction that some lawyers experienced when working with occupational therapists. Failure on the part of occupational therapists to provide clearly stated opinions regarding functional capacities (16%) or to answer the referral questions (10%) resulted in dissatisfaction for some lawyers. Others expressed concern that functional capacity findings were "too subjective" (9%), not coordinated with medical data (8%) or unclear in the written report (7%).

Table 4-14

Areas of Dissatisfaction for Lawyer Respondents When Consulting With Occupational Therapists

	f	(%)
Opinion regarding functional abilities was unclear	14	(15.7)
Referral questions were not answered	9	(10.1)
Functional findings were too subjective	8	(9.0)
Functional findings not coordinated with medical data	7	(7.9)
Documentation was unclear	6	(6.7)
Testing techniques/methods were not explained	5	(5.6)
Unavailable for consultation during the evaluation	4	(4.5)
Findings were not supported by research	3	(3.4)
Post-evaluation consultations were not provided	3	(3.4)
Pre-evaluation consultations were not provided	3	(3.4)
Report arrived late	2	(2.2)
Other	6	(6.7)

4.5.3 Overall Satisfaction With Occupational Therapy Services

Occupational therapists rated their perceived satisfaction of those lawyers who had referred clients for occupational therapy services. This rating was compared to the actual satisfaction rating of lawyers who had used occupational therapy consulting services. Results are summarized in Table 4-15. Overall, occupational therapists perceived that their lawyer consumers were more satisfied with occupational therapy services than actually indicated by lawyer respondents. A significant difference existed between the perceptions of the two professional groups.

Table 4-15

Occupational Therapists' Perception of Lawyers' Satisfaction Compared to Actual Ratings of Overall Satisfaction by Lawyers

Profession	*M*	(*SD*)	*t*	(*df*)	*p*
Occupational therapists[a]	7.91	(1.41)	3.662	(102)	.000
Lawyers[b]	6.67	(1.65)			

Note. [a]$n = 26$. [b]$n = 80$.

4.6 Occupational Therapy Interviews

A total of 18 occupational therapists agreed to be interviewed. These volunteers did not vary significantly in age or years of occupational therapy experience from occupational therapy respondents who did not volunteer for interviews (see Table 4-16). One respondent was deleted from the sample as the practitioner did not provide occupational therapy services directly to lawyers as an expert witness. This reduced the pool of interviewees to 17.

Table 4-16

Comparison of Age and Experience of Occupational Therapists Who Were Interviewed and Occupational Therapy Respondents Who Were Not Interviewed

	Interviewed OTs		Non-interviewed OTs				
	M	(*SD*)	*M*	(*SD*)	*t*	(*df*)	*p*
Age	37.706	(8.220)	36.300	(4.709)	.53	(25)	.602
Years of experience	13.471	(7.447)	12.333	(8.679)	.38	(27)	.708

Note. OTs = Occupational Therapists.

4.6.1 How Occupational Therapists Began Working as Medical-Legal Consultants

Occupational therapists were asked to describe how they first embarked on medical-legal consulting. Seven interviewees (47%) first provided this type of service as an employee of another organization, in either public or private practice employment. Three respondents (18%) first provided consulting services as a favor to a lawyer friend or by accepting an unsolicited telephone referral from legal counsel. Two respondents (12%) began service provision while they were engaged in graduate studies. Two occupational therapists were invited to join an active practice. Only two interviewees indicated that they actively pursued this area of practice because favorable business opportunity existed.

4.6.2 Medical-Legal Contributions of Occupational Therapy Expert Witnesses

Fifteen interviewees (88%) indicated that the occupational therapist's diverse skill set is applied while evaluating the functional occupational performance abilities of their medical-legal clients. Four respondents noted that the occupational therapist is often the only professional who assesses clients in their work or home environments. Two respondents described the occupational therapist's sensitivity to the life span

development process as an important element of occupational performance evaluation. Two respondents indicated that the occupational therapist can educate the lawyer in disability-related areas; for example, confirming the credibility of the functional limitations demonstrated by individual clients.

Seven interviewees (41%) reported that they feel highly valued for the occupational therapy consulting services that they provide.

4.6.3 Characteristics of the Occupational Therapist-Lawyer Association

Eight interviewees (47%) described a formal, business association with their referring lawyers. Most often, referrals were arranged by the lawyer's clerical assistant. Eight interviewees (47%) indicated that they preferred an egalitarian, open relationship with lawyers, finding that this facilitated favorable communication regarding the lawyer's referral requirements. Clearly stated referral questions were preferred by 7 occupational therapists (41%).

Four occupational therapists (24%) perceived that repeat referrals from the same lawyer or firm was an indication of a successful consultative association. Other sources of role satisfaction included: a perception of having helped with a case (n = 7, 41%); a positively received report (n = 3, 18%); and the identification of a previously missed medical condition (n = 2, 11.8%).

Several variables were reported to contribute towards a negative professional experience while consulting to lawyers. Some occupational therapists reported that limited communication with legal counsel (n = 6, 35%) and minimal feedback on their occupational therapy services (n = 5, 29%) were disappointing features of this type of consulting practice. The competitive nature of the work (n = 4, 24%) was disliked by others. Five interviewees (29%) described uncomfortable ethical issues that emerged including occasional requests to edit documentation. Three interviewees (18%) were uncomfortable with the financial or legal aspects of practice. One therapist indicated that

he/she planned to discontinue practice due to the ethical stressors experienced while serving as an expert.

4.6.4 Challenges of the Occupational Therapy Expert Witness

Nine interviewees (53%) indicated that referred cases were very complex and challenged their clinical abilities. Evaluation of those with multiple injuries or chronic pain symptoms was often requested. Language barrier or cultural value issues added some complexity to clinical practice for some therapists.

Seven interviewees (41%) perceived that there was significant legal scrutiny of their work. This was considered a particularly challenging aspect of work. One therapist noted, "I think it's very stressful . . . you have to be accountable at all times, not just when [the case] is going to court." Two interviewees indicated that working on behalf of defense was more challenging as the client could perceive the occupational therapy consultant as an adversary, rather than a helping health care professional. Six interviewees advised that all experts should "be impartial, whether you're on the defense side or the plaintiff side."

Provision of court testimony was perceived as a very stressful, professionally challenging activity by 9 respondents (53%). Only one interviewee was disappointed that he/she had not yet provided evidence in court. One respondent perceived that "the real test is in the court room".

Several other features of medical-legal consulting also added challenge to this type of occupational therapy practice. Meeting legal deadlines was challenging for 5 respondents (29%). Another interviewee indicated that "lawyers often want black and white information that I am not sure [that] anybody could give . . . ." Three interviewees (18%) reported similar difficulties in providing specific quantification of losses in functional terms.

4.6.5 Recommended Professional Preparation for the Expert Witness Role

Twelve interviewees (71%) recommended that new graduates or practicing occupational therapists gain a well-rounded clinical background prior to considering this type of occupational therapy practice. Five (29%) interviewees recommended graduate level training, noting that occupational therapists are offering evidence in the same arena as other professionals with master's or doctoral credentials. Ten interviewees (59%) also recommended having a minimum of 3 to 10 years clinical experience. One therapist noted, "Just because you can have an opinion about something, it doesn't mean it's an expert opinion." Eight respondents discussed the potentially negative professional impact that could result should an unprepared practitioner choose to accept medical-legal referrals. For example, respondents thought that poorly documented work might negatively colour the view of lawyers towards all occupational therapy practitioners.

Nine interviewees (53%) suggested that occupational therapists should understand the legal system and the effective communication skills required by this system. This included oral presentation and written documentation skills. These therapists described the unique practice requirements of medical-legal consulting in this regard.

Four occupational therapists (24%) noted the importance of having a mentor. Three individuals indicated that working in isolation was one of the most difficult aspects of this type of consulting practice. One therapist noted, "Without my . . . mentors . . . I wouldn't have been prepared at all." For some interviewees, finding an appropriate mentor seemed to be a challenge. One therapist thought that the provincial professional association might help in this regard.

4.6.6 Recommended Business Preparation for the Expert Witness Role

Nine interviewees (53%) noted that business operation issues were a challenging aspect of medical-legal consulting. Most therapists cited that non-payment or delayed

payment of invoices had been a difficult aspect of business. One therapist advised colleagues to have an alternate source of income.

Six occupational therapists (35%) indicated that they needed to develop better marketing skills. Some therapists suggested that one form of effective marketing could include education of legal referral sources about the diversity of occupational therapy skills. The continuing domination of the medical model in medical-legal circles was described by one therapist; other interviewees were encouraged that physicians were now directly referring, or recommending referral to occupational therapists for functionally-oriented evaluations. One therapist lamented, "We're the most appropriate people to do the job and we haven't seized the opportunity."

CHAPTER 5

DISCUSSION AND CONCLUSIONS

5.1 Discussion

This chapter presents a discussion of the research results. The limitations of the study are reviewed and suggestions for future research are outlined.

5.1.1 Study Methodology

Survey Returns The survey return rates for this study were favourable. The use of two follow-up letters was effective in increasing the return rate more than two-fold (from 37% to 85%) in the occupational therapist group, and it increased the response rate 1.5 times (from 17% to 26.5%) in the lawyer group. These return rates were compared to results reported by other researchers using a similar methodology (Anema & Brown, 1995). The rate of return for the occupational therapist group exceeded suggested minimal return rates of 40% to 60% (Payton, 1994). The 85% rate of return permits generalizing of findings to the population of private practice occupational therapists working in Alberta. For lawyers, the 27% rate of return was considerably smaller but this exceeded the rates obtained by other researchers who have surveyed the legal profession (T. Evenson, Alberta Chapter, Canadian Bar Association, personal communication, September 5, 1996). Despite this rate of return, the sample size of 141 respondents was large. Still, this low rate of return necessitates cautious interpretation of the data obtained from lawyer respondents.

Occupational Therapy Interviews Of the occupational therapists that provided medical-legal services, 62% volunteered for the interview portion of this study and all of these volunteers were interviewed. These individuals did not differ in age and years of professional experience from those who did not volunteer for the interview. Therefore, it

may be assumed that biases between the groups, if any, were not due to age or years of experience. The interview provided qualitative information that complemented the quantitative data and offered a more intimate "insider's view" of the experiences of occupational therapists who provided medical-legal consultations.

5.1.2 Occupational Therapy: Professional and Practice Issues

When approached, most Alberta occupational therapists (88%) agreed to provide medical-legal services. In general, these occupational therapists were experienced practitioners with a mean of 13 years of professional experience. Additionally, more of these therapists had graduate degrees (n = 6), compared to those who did not provide medical-legal services (n = 4). Neither level of education, nor years of experience were statistically different from therapists who did not provide medical-legal consultations. However, qualitative data suggested that occupational therapists should not consider providing this type of consultation before acquiring about three or more years of experience, and having one or more clinical specializations. Occupational therapists should also consider obtaining graduate training before beginning medical-legal consultations. Most of the lawyers in this study preferred occupational therapist consultants to have these academic and experience credentials. Further, lawyers preferred those therapists that had published. Likely, the lawyers perceived that these qualifications contribute to the occupational therapist's credibility, a characteristic that is sought by lawyers (Bruce, 1992; Elson, 1987).

The findings of this study indicated that Alberta legal professionals recognized and utilized the occupational therapist's professional skills in evaluating occupational performance abilities. When asked, the majority of lawyer respondents accurately described the key professional practice areas of occupational therapists. This recognition of occupational therapy in legal case adjudication is relatively recent, given the short time (M 3.5 years) that Alberta occupational therapists have been providing this service.

Significantly more occupational therapists who provided medical-legal services worked in the vocational rehabilitation and community/health promotion areas, compared to those who did not provide medical-legal services. The lawyer respondents were familiar with these practice areas, in particular, the occupational therapist's role in evaluating a client's capability for independent living capacity or employment. Thus, occupational therapists planning to provide medical-legal services should acquire skills in these practice areas. These skills and knowledge can be acquired through continuing education, graduate studies, and specialized clinical practice. Lawyer respondents also preferred that occupational therapy consultants are court-qualified as expert witnesses. As the court's stringent review of education, specialization and experience is part of this qualification process, occupational therapists should carefully review their own skills in the preferred areas of practice, prior to agreeing to act as a consultant for legal cases.

The results of this study showed that occupational therapists employed a variety of professional techniques, in particular, the use of objective test methods of a client's performance. An example was the use of evaluation techniques to rate maximal or sincere effort. While most therapists felt adequately prepared professionally, a few occupational therapy respondents expressed a need for more functional performance tests that are reliable and valid. In order for occupational therapists to evaluate and select the most appropriate assessment tools, practitioners may need continuing or graduate education because this knowledge may not be acquired in entry-level training.

The results of this study also suggested that the "art" of occupational therapy practice was not always viewed positively by some members of the legal profession. Occupational therapists were perceived as subjective or "plaintiff sympathetic" by eight lawyers. Because litigation practice calls for objective, definitive test results, occupational therapists should strive to balance qualitative data with quantifiable assessment results when reporting on their evaluations. Possibly, the stress reported by occupational therapists was related to a limited availability of quantitative tests in an area

of practice where outcome measurements are demanded and critically reviewed by the consumers.

5.1.3 Occupational Therapy: Educational and Regulatory Issues

Based on the results of this study, occupational therapists could benefit from formal education on the requirements of the legal system and how it applies to professional practice. Presently, practitioners have minimal professional preparation for the expert witness role. As seen in the literature, the occupational therapy respondents in this study described that they learned these requirements through "on-the-job" training (Gee, 1988), or relied on informal mentoring from their colleagues. Unfortunately, this type of support is rarely available because occupational therapists who provide this service tend to be sole practitioners, and because of the competitive nature of private practice. To better prepare occupational therapists for the challenging medical-legal environment, educational programs could be developed for occupational therapists. Academic programs could facilitate the enrollement of undergraduate students in basic legal training courses. Professional and regulatory bodies could jointly prepare materials and courses for continuing education to ensure professional competency. Others have noted that the integration of legal education into academic curriculum has improved the professional awareness and positive attitudes of training health professionals (Gee, 1988; LeBlang, Douglas Henderson, Kolm & Paiva, 1985).

The qualitative survey responses of occupational therapists indicated that the occupational therapy profession should better define the legal role or responsibilities of practitioners. In spite of the increasing demand for litigation support services from occupational therapists (Canadian Association of Occupational Therapists, 1997), the occupational therapy profession has yet to define the practitioner's responsibility to serve as an expert witness, or generate guidelines for the membership who are called upon to serve as expert witnesses. This type of professional development, in the form of

position statements and practice guidelines, is timely (Cocco, 1989). The guidelines could include recommendations for minimum professional education and experience, evaluation techniques, documentation formats, and techniques for provision of testimony at discoveries or in court.

5.1.4 Implications for the Occupational Therapist-Lawyer Relationship

Over 60% of the lawyer respondents sought the services of occupational therapists in the one-year period that was examined. The reasons for not using occupational therapy services included the lawyer respondents' limited understanding of the roles of occupational therapy, and a perception that occupational therapists would be too subjective. The results also revealed that occupational therapy practitioners correctly perceived that lawyers relied predominantly on the guidance of medical professionals for legal case adjudication. The opinion of these medical professionals was given more weight, relative to the opinion of other allied health professionals. These findings suggested that the occupational therapy profession could benefit from a clarification of its complementary role to medical services. This may boost the relative status of occupational therapy and facilitate improved multidisciplinary communication between lawyers and occupational therapists. With a heightened awareness of occupational therapy, lawyers might also begin using other occupational therapy services that are currently rarely utilized, for example, functional evaluations to determine competency for the aging or mental health populations.

The results of this survey showed that occupational therapy medical-legal consultants provided services to a new type of client, the referring lawyer. This finding was consistent with that of other authors who have noted that occupational therapy practitioners must balance the needs of two separate clients: their lawyer-client and their patient-client (Townsend et al., 1997). While occupational therapists are familiar with the needs of their patient-clients, lawyers who refer their clients to occupational

therapists have different expectations. The results of this research suggested that the lawyer-client had distinct legal expectations that were not readily understood, nor could be easily met by occupational therapy consultants. Lawyers seek evaluations of functional abilities and losses, and must compile evidence of quantifiable losses for their personal injury claimants (Bruce, 1992). Thus, occupational therapists choosing to provide medical-legal services should increase their awareness of the lawyer's reasons for referral.

Unfortunately, occupational therapy respondents indicated that they received minimal constructive feedback from lawyers on the utility of their occupational therapy evaluations, information that could become the basis for revision and refinement of evaluation techniques. This could explain the significantly different satisfaction ratings expressed by occupational therapy and lawyer respondents. Occupational therapists perceived that lawyers were more satisfied with their consulting services than actually expressed by the lawyers respondents. This suggested that occupational therapists and lawyers need to improve communication, both prior to and following the completion of evaluations. For example, while still retaining an objective, neutral evaluator's position (Bruce, 1992; Demaio-Feldman, 1987), occupational therapists need to be aware of the purpose of referral in order to determine if an evaluation would be useful to the lawyer. Further, feedback following the submission of an evaluation would provide valuable information to the occupational therapist for service evaluation purposes. These recommendations are supported by Chilton (1996) who advises practitioners to "develop programmes or services that our consumer group really want, rather than continue to give them what we perceive they need" (Chilton, 1996, p. 160).

5.2 Limitations of the Study

One limitation of this study was related to the use of the Alberta Association of Registered Occupational Therapists' (AAROT) mailing list. As AAROT did not

consistently code private practitioners by area of specialization, it was possible that some occupational therapists who practiced in the medical-legal area were not contacted by direct mail. Nevertheless, all practicing occupational therapists would have received the two issues of *Perspectives* which carried the advertisement for recruiting subjects. These selected sampling strategies were the most efficient, cost-effective methods available. The high rate of survey return for the occupational therapy group indicated the representativeness of those who were contacted for this study.

Another limitation was that the 27% rate of return for lawyers did not meet the recommended 40% to 60% response rate that is considered favourable and would permit generalization of the findings to the target population (Gordon & Stokes, 1989; Payton, 1994). This lower response rate might have been related two factors. First, the Canadian Bar Association's mailing list contained lawyers who were actively practicing in the personal injury field, as well as others who had only an interest in the area. Lawyers who were not actively practicing in personal injury-related areas may not have responded to the survey because they perceived that the study did not apply to their particular practice. Second, inaccurately addressed courier-delivered mail (n = 178) might not have been returned to the researchers and this may have contributed to a reduced return rate. Still, the sample size of 141 lawyer respondents was a considerable size.

As with most surveys, all respondents in this study were self-selected. The lawyer and occupational therapy subjects might have been biased in some way by this voluntary manner of participation. Finally, the study was limited to the Alberta province and the results may not be generalizable to other provinces in Canada.

5.3 Suggestions for Future Research

This study contributed original data to the role of occupational therapists serving as expert witnesses in Alberta. The results suggested other areas that require further investigation.

The complex, clinical role of the expert witness occupational therapist as a provider of services to two different clients requires further research. During the interviews, the occupational therapists described some moral and ethical issues that arose when they provided medical-legal services. It was apparent that balancing the needs of the lawyer and the injured party was challenging for even the most experienced therapist. A qualitative study could be conducted to identify these important aspects of occupational therapy practice, and could guide the occupational therapist when providing clinical services to third party payers, including lawyers.

The need for objective, reliable and valid evaluation measures was identified by the occupational therapist and lawyer respondents. This recommendation is supported by Strong and Westmorland (1996) who recently conducted an evaluation of functional performance methods that are marketed to rehabilitation professionals. Occupational therapists need to develop quantifiable test methods that will withstand rigorous legal review. Many of the instruments available for clinical practice have not been studied empirically. This is particularly true of many vocational evaluation instruments and protocols which are used by occupational therapists. Establishing the reliability, validity and clinical utility of these instruments is viewed as fundamental to furthering the credibility of occupational therapists, notably in the medical-legal area of practice.

The current availability of academic or continuing education programming that addresses legal aspects of practice could be examined. The experiences of occupational therapists practicing in Alberta suggested that the availability of formal preparation for these aspects of clinical practice would have been beneficial. A study of this type could review undergraduate, graduate and continuing education curriculum and programs, provincially or across Canada. This data could be used to develop professional training. Further, during the course of the literature review section of this study, it became apparent that professional liability and regulatory issues need to be addressed as well (Scott, 1996). This is particularly true of the Canadian environment where minimal

research or scholarly publications have addressed these issues. Thus, further studies on legally-oriented matters could extend beyond the professional issues of serving as an expert witness.

Finally, further research which examines the impact of occupational therapy consultations on the outcome of legal cases could be conducted. This research could explore the influence that the professional opinion of occupational therapists had on legally-negotiated settlements or judicial decisions rendered at trial.

5.4 Conclusions

The main objective of this study was to examine the role of Alberta occupational therapists who serve as expert witnesses. This research addressed six questions. Alberta occupational therapists and personal injury lawyers responded to questions regarding professional qualifications, employment status, service referral patterns and evaluation methods. The respondents also rated their perceived or actual satisfaction with occupational therapy services, and the importance of these services, relative to those provided by other health professionals. The experiences of occupational therapists who provided medical-legal services were also examined through interviews.

With respect to credentials, the results showed that occupational therapists who chose to provide medical-legal consulting services were experienced professionals. Interpersonally, the occupational therapists' association with lawyers was very different than the interaction with other health professionals and challenged the most experienced clinicians. These research findings suggested that this type of occupational therapy practice requires highly developed clinical, personal and professional skills.

Alberta occupational therapists provided a range of functional evaluation services to lawyers. The evaluation of independent living and work capacities emerged as key areas of assessment that were used by the legal community. Occupational therapists and

lawyers described the importance of utilizing objective test methods while evaluating the occupational performance of legal clients. The recent entry of Alberta occupational therapists into the medical-legal area of practice was reflected in the research findings. Not surprisingly, these occupational therapists were developing the required skills and techniques "on-the-job" and educating the legal community about the value of occupational therapy on a case-by-case basis.

Relative to the services provided by other health professionals, occupational therapy services were considered by lawyers to be less important than medical and counselling services, but more important than those services provided by other allied health professionals. Overall, the findings suggested that occupational therapists should develop an effective communication link with their referring lawyers to understand their particular legal requirements. This, in turn, may positively influence the lawyer's understanding of occupational therapy and the medical-legal services that can be provided by occupational therapy practitioners.

In regard to professional preparation, the research results suggested that occupational therapists could benefit from better education prior to entering the medical-legal area of practice. Presently, individual professionals acquire the necessary skills through informal means. More extensive educational preparation for medical-legal aspects of practice developed for senior undergraduate and practicing therapists would advance the occupational therapist's sensitivity to the expectations of lawyers who refer their clients for occupational therapy evaluations. Further, professional and regulatory bodies should develop guidelines and standards of practice to educate and direct occupational therapists who assume this professional responsibility.

Finally, the occupational therapy profession should inform lawyers through a variety of means about the skills and qualifications of occupational therapy practitioners. Although a high majority of lawyers described a reasonable understanding of occupational therapy, this type of information would clarify the value of occupational therapy

consultative services when used for medical-legal purposes. With a clearer understanding of the unique, complementary role played by occupational therapists, the professional opinion of occupational therapists should be given more credence in the legal community and the court of law.

In conclusion, this study contributed original data to the body of literature on the role of occupational therapists as expert witnesses. Clearly, both occupational therapists and lawyers agreed that occupational therapists play an important role as medical-legal consultants. However, if a number of the identified issues were addressed, occupational therapists would be better prepared to meet the challenges of this type of practice.

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APPENDIX A

Occupational Therapist Research Questionnaire and Postcard

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OCCUPATIONAL THERAPY AND MEDICAL-LEGAL EVALUATIONS RESEARCH QUESTIONNAIRE:

Dear Colleague:

I am writing to request your participation in a research project conducted under the joint supervision of the Health Law Institute, Faculty of Law and the Faculty of Rehabilitation Medicine. Entitled, "The Role of Occupational Therapy Expert Witnesses in Alberta".

The purpose of this research project is to examine the use of occupational therapy consulting services by Alberta lawyers and the experiences of occupational therapists that provide those services. Your responses will provide valuable descriptive data and may be used to guide the occupational therapy membership when serving as an expert witness. Results may contribute towards the development of guidelines for practice, or provide the foundation for undergraduate or continuing educational programming.

There are no known risks associated with participation in this study. Your identity will be held in confidence by the University of Alberta and will not be divulged to any source. All written materials will be secured in locked cabinets in the thesis supervisor's laboratory in the Department of Occupational Therapy. The results of this study may be presented or published. The researchers agree to protect your confidentiality in any presentations or publications arising from this study.

The enclosed questionnaire should take you approximately 20 minutes to complete. Please answer questions completely and as accurately as possible. It is optional to answer all the questions. Your consent to participate in this study is assumed by your completion and return of this questionnaire. Definition of some terms can be found on the last page of this survey.

Following return of this questionnaire, a sample of individual practitioners will be contacted to participate in a brief interview, in person or by telephone appointment. Please indicate your willingness to be a participant in this aspect of this study on the enclosed stamped postcard. Forward the enclosed postcard separately from the questionnaire. In this way, your questionnaire will remain confidential.

If you desire, you will be provided with a summary of the findings. Indicate your preference on the postcard prior to mailing.

*Please return this questionnaire by **1996. A stamped and addressed envelope is enclosed for this purpose.* ***YOUR RETURN OF THIS QUESTIONNAIRE IS VERY IMPORTANT!*** *If you require further information, you may contact the following individuals:*

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OTHER THESIS COMMITTEE MEMBERS FROM THE FACULTIES OF REHABILITATION MEDICINE AND LAW ARE LISTED ON THE NEXT PAGE.

THESIS COMMITTEE MEMBERS:

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Please detach this sheet and retain for your records.

THE ROLE OF OCCUPATIONAL THERAPY AS EXPERT WITNESSES
RESEARCH QUESTIONNAIRE:
(☑) Check the most appropriate survey item(s) for each question.

1. Have you ever been asked to provide medical-legal expert witness services to lawyers?
☐ Yes ☐ No

2. Did you accept or decline.
☐ Accept ☐ Decline
If you declined provide detail:

3. Have you ever provided medical-legal expert witness services to lawyers?
☐ Yes ☐ No

4. I practice in the following area(s)

☐ Administration	☐ Geriatrics/long-term Care	☐ Pediatrics
☐ Burns	☐ Hands	☐ Physical Medicine
☐ Cardiology	☐ Mental Health	☐ Rheumatology
☐ Community/HomeCare	☐ Neurology	☐ Seating
☐ Dysphasia	☐ Orthopedics	☐ Vocational Rehab
☐ Ergonomics	☐ Palliative Care	☐ OTHER:

5. Currently, I am:

☐ self employed (private practice)	☐ a staff therapist in a private practice
☐ an academic faculty/educator	☐ a staff therapist in a healthcare institution
☐ a researcher	☐ other (specify):

6. The number of occupational therapists in my facility is ☐

7. Some information about Me. Please provide the following information:
Age: _____ Gender Male ☐ Female ☐
Level of Post Secondary Education
☐ Dip(OT) ☐ MSc(OT) ☐ PhD(specify per subj) _____
☐ BSc(OT) ☐ Masters(Other specify) _____ ☐ Other Education (specify) _____
Years of Experience as an Occupational Therapist _____
Other Related Work Experience(please describe) _____

IF YOU HAVE PROVIDED OCCUPATIONAL THERAPY MEDICAL-LEGAL CONSULTING SERVICES, PLEASE COMPLETE THE REMAINDER OF THIS QUESTIONNAIRE. IF YOU HAVE NOT PROVIDED OCCUPATIONAL THERAPY MEDICAL-LEGAL SERVICES, THANK YOU FOR TAKING THE TIME TO COMPLETE THIS SURVEY.

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THE FOLLOWING QUESTIONS ARE TO BE ANSWERED BY THOSE OCCUPATIONAL THERAPISTS THAT HAVE PROVIDED MEDICAL-LEGAL CONSULTING SERVICES

8. *I have received referrals for approximately_____medical-legal cases during the past year (1 July 1995 - 30 June 1996).*

During this same one year period, _____% of my work was medical-legal.

I have been doing medical-legal work for _____ years.

9. *I have received referrals from:*

☑		(☑ Check proportion of referrals from each source. <25%	25-50%	51-75%	76-100%
☐	*plaintiff*	☐	☐	☐	☐
☐	*defence*	☐	☐	☐	☐
☐	*actuary*	☐	☐	☐	☐
☐	*court order*	☐	☐	☐	☐
☐	*insurance adjustor/case manager*	☐	☐	☐	☐
☐	*vocational counsellor*	☐	☐	☐	☐
☐	*other (specify)* _____	☐	☐	☐	☐

10. *I have received requests for:*

☑		(☑ Check proportion of each type of referral <25%	25-50%	51-75%	76-100%
☐	*cost of future care*	☐	☐	☐	☐
☐	*functional capacity evaluation*	☐	☐	☐	☐
☐	*job visit*	☐	☐	☐	☐
☐	*vocational assessment*	☐	☐	☐	☐
☐	*homemaking evaluation*	☐	☐	☐	☐
☐	*case consultation*	☐	☐	☐	☐
☐	*report critiques*	☐	☐	☐	☐
☐	*leisure assessments*	☐	☐	☐	☐
☐	*other (specify)* _____	☐	☐	☐	☐

11. *I have used the following instrument(s)/professional techniques:*

☑

☐ *ADL/IADL evaluation*	☐ *Job Visit/Analysis*	☐ *Physical Examination*
☐ *Functional Assessment*	☐ *Maximal Voluntary Testing (specify approach:_____)*	☐ *Psychometric Testing*
☐ *Hand Dexterity Testing*	☐ *Mental Status*	☐ *Work Samples*
☐ *Home Visit*	☐ *Pain evaluation*	☐ *Other (specify):*
☐ *Interview*	☐ *Psycho-Social Evaluations*	_____

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12. *I have been qualified as an expert within the Alberta civil court system.*

☐ Yes ☐ No ☐ Unsure

I have been qualified as an expert in another provincial court system.

☐ Yes ☐ No ☐ Unsure

If yes, specify province(s): _____

I have made ☐ *(number) of court appearances between 1 July 1995 and 30 June 1996 inclusive.*

In total, I have made ☐ *(number) of court appearances since* ☐ *(year of first court appearance).*

On average, I make ☐ *court appearances per year.*

13. *Professional Fee Schedule*

On average, my fee for each evaluation is (in Canadian Dollars)

Cost of Future Care	$	*Case Consultation*	$
Functional Capacity Evaluation	$	*Leisure Assessment*	$
Job Visit	$	*File Review*	$
Vocational Assessment	$	*Report Critique*	$
Homemaking Evaluation	$	*Other (specify)* _____	$

My hourly rate for professional services is: $

My hourly rate for court related services is: $

Other fees that I charge include (please list): _____

14. *The most rewarding aspect(s) medical-legal consulting is:*

- ☐ *it challenges my professional abilities*
- ☐ *it encourages professional development*
- ☐ *it offers flexible work conditions*
- ☐ *the monetary compensation*
- ☐ *the elevated professional status*
- ☐ *the professional contact with lawyers*
- ☐ *appreciative referral sources*
- ☐ *appreciative patients/clients*
- ☐ *the trial appearances*
- ☐ *other (specify)* _____

15. *The most difficult aspect(s) of medical-legal consulting is (eg. documentation):*

- ☐ *explaining the role of occupational therapy*
- ☐ *lack of role models*
- ☐ *competition with other occupational therapists*
- ☐ *lack of training for medical legal work*
- ☐ *inadequate occupational therapy training*
- ☐ *trial appearances*
- ☐ *documentation requirements*
- ☐ *interpersonal relations with lawyers*
- ☐ *remaining objective*
- ☐ *receiving timely payment for professional services*
- ☐ *other (specify):* _____

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16. *Rate the importance of occupational therapy consulting services, relative to other health care practitioners that provide consulting services for personal injury cases. Using the three-point scale, rate your perception of the importance of the medical-legal data each professional can provide in a personal injury case.*

Rating Scale

1 = not as important as occupational therapy
2= equally important as occupational therapy
3= more important than occupational therapy

☐ medical specialists	☐ psychologists	☐ massage therapists
☐ nurses	☐ family doctor	☐ vocational counsellors
☐ chiropractors	☐ physical therapists	☐ other (specify) _____

17. *How satisfied are lawyers with your occupational therapy services? Place an "X" on the line to indicate your perception(s) of the overall satisfaction level of lawyers that use your services.*

very dissatisfied ——————————— very satisfied

18. *If I were to give advice to an occupational therapist embarking on medical-legal consulting, some of the most important things they should know are:*

19. *Additional Comments:*

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DEFINITION OF TERMS

Actuary	*expert engaged to complete financial calculations.*
(Instrumental) Activities of Daily Living Evaluation (ADL/IADL)	*personal care evaluation*
Case Consultation	*a review of an individuals health status including documents on file, recommending therapeutic strategies appropriate to the individual.*
Case Manager	*a professional providing medical or paramedical service coordination.*
Cost of Future Care	*determination of personal care requirements for the individual's lifespan.*
Court Order	*judicial order (eg. request for expert evaluation).*
Defense	*lawyer representing the defendant(s).*
Functional Assessment	*assessment of the integration of mental, physical, socio-cultural and spiritual states and their interation in order to perform purposeful activities (eg. selfcare, leisure, productivity).*
Functional Capacity Evaluation	*the comprehensive, objective testing of a person's ability in work-related tasks.*
Hand Dexterity Testing	*an evaluation of hand function using standardized or non-standardized tests.*
Home Visit	*a visit to the client's residence to evaluate personal care, home productivity, and/or environmental factors that impact on functional competencies.*
Homemaking Evaluation	*an assessment of home productivity capacities and requirements for assistive equipment and/or replacement labour services.*
Insurance Adjustor	*insurance company representative /case coordinator.*
Interview	*structured or semi-structured interview.*
Job Visit	*a site visit to evaluate job demands.*
Leisure Assessments	*the ability to perform relevant leisure activities.*
Maximal Voluntary Testing	*testing of maximal, sincere effort by the client during evaluation.*
Mental Status	*the functional state of the mind.*
Pain Evaluation	*perceived level of pain using questionnaires or diagrams.*
Physical Examination	*examination of physical status, for example: joint range, muscular strength, sensation, reflexes, coordination and balance.*
Plaintiff	*lawyer representing the injured party.*
Psychometric Testing	*tests that measure psychological variables including intelligence, aptitude, behavior and emotion.*
Psycho-Social Evaluations	*assessment of an individual's thoughts and feelings, and the impact of these variables on behaviour and relationships.*
Report Critiques	*a professional critique of the work of another expert.*
Vocational Assessment	*a comprehensive, interdisciplinary process of evaluating an individual's physical, mental and emotional liabilities, limitations and tolerances in order to identify functional competencies and liabilities (e.g. personality, aptitudes, interests, work habits, physical abilities and tolerance.*
Vocational Counsellor	*professional provider of vocational assessment, counselling and placement services.*
Work Samples	*standardized or non-standardized tests of work activities.*

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____ I agree to be interviewed regarding my experiences providing expert witness services

____ Please send a copy of the results of this study

Name: _____

Address: _____

Phone: _____

Fax: _____

APPENDIX B
Lawyer Research Questionnaire and Postcard

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2-64 Corbett Hall, Telephone (403) 492-2499
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RESEARCH QUESTIONNAIRE: LAWYERS AND OCCUPATIONAL THERAPY

Dear Sir/Madame:

As a personal injury lawyer currently practicing in Alberta, you are invited to participate in a research project conducted under the joint supervision of the Health Law Institute, Faculty of Law and the Faculty of Rehabilitation Medicine. The purpose of this research project, entitled "The Role of Occupational Therapy Expert Witnesses In Alberta", is to examine the use of occupational therapy consulting services by your practice and other Alberta lawyers.

The purpose of this research project is to examine the use of occupational therapy consulting services by Alberta lawyers and the experiences of occupational therapists that provide those services. Your responses will provide valuable descriptive data and may be used to guide the occupational therapy membership when serving as an expert witness. Results may contribute towards the development of guidelines for practice, or provide the foundation for undergraduate or continuing educational programming.

There are no known risks associated with participation in this study. Your identity will be held in confidence by the University of Alberta and will not be divulged to any source. All written materials will be secured in locked cabinets in the thesis supervisor's laboratory in the Department of Occupational Therapy. The results of this study may be presented or published. The researchers agree to protect your confidentiality in any presentations of publications arising from this study.

The following questionnaire should take you approximately 20 minutes to complete. Although we would appreciate it if you answer all the questions, you may choose not to answer some questions. All results will be held in strict confidence. Definitions of some terms can be found on the last page of this survey.

If you desire, you will be provided with a summary of findings. Please complete the enclosed stamped postcard, indicating your preferences. Forward the postcard separately from the questionnaire. In this way, your questionnaire responses will remain confidential.

*Please return this questionnaire by **1996. A stamped and addressed envelope is enclosed for this purpose. <u>YOUR RETURN OF THIS QUESTIONNAIRE IS VERY IMPORTANT!</u> If you require further information, you may contact the following individuals:*

Debra Hall-Lavoie, B.Sc.(OT)
Principal Researcher
Graduate Student
Department of Occupational Therapy
University of Alberta
Edmonton, AB. T6G 2G4
(403) 434-6517 (voice)
(403) 437-8978 (fax)
dmh3@gpu.srv.ualberta.ca

Dr. Lih Lin
Supervisor
Assistant Professor
3 - 14 Corbett Hall
Department of Occupational Therapy
University of Alberta
Edmonton, AB. T6G 2G4
(403) 492-5108 (voice)
lih.lin@ualberta.ca

OTHER THESIS COMMITTEE MEMBERS FROM THE FACULTIES OF REHABILITATION MEDICINE AND LAW ARE LISTED ON THE NEXT PAGE.

THESIS COMMITTEE MEMBERS:

Timothy A. Caulfield, LL.M.
Research Director, Health Law Institute
Faculty of Law
416 Law, University of Alberta
Edmonton, Alberta T6G 2H5
(403) 492-8358 (voice)

Professor Masako Miyasaki
Acting Chair, Department of Occupational Therapy
Faculty of Rehabilitation Medicine
2-64 Corbett hall
University of Alberta
Edmonton, Alberta T6G 2G4
(403) 492-9172 (voice)

Dr. Michelle Cruz Bani
Chair, Department of Physical Therapy
Faculty of Rehabilitation Medicine
2 - 50 Corbett Hall
University of Alberta
Edmonton, Alberta T6G 2G4
(403) 492-9127 (voice)

Please detach this sheet and retain for your records.

THE USE OF OCCUPATIONAL THERAPISTS AS EXPERT WITNESSES
SURVEY QUESTIONNAIRE:

(☑) Check the most appropriate survey item or items for each question.

1. ***I have used an occupational therapist for my personal injury cases.***

☐ *Yes* ☐ *No* *Please explain:* _____

_____

_____

2. ***The following is my understanding of occupational therapy services:***

_____

_____

_____

_____

3. ***I have practiced in the following area(s)***
(estimate the proportion of work from each source)

☐ *Plaintiff* ☐ ☐ *Defence* ☐ ☐ *Other* _____ ☐

☐ *WCB* ☐ ☐ *Insurance* ☐

4. ***Currently, I am employed:***

☐ *in a one-person law office* ☐ *as a senior associate*

☐ *as a partner* ☐ *other (specify)* _____

☐ *as a junior associate*

5. ***The number of lawyers in my firm is*** ☐

6. ***Some information about me.***

Age: _____ *Gender* ☐ *male* ☐ *female*

Level of Post Secondary Education

☐ *LLB* ☐ *LLM* ☐ *Other* _____

I have worked as a lawyer for ☐ *years.*

IF YOU HAVE USED OCCUPATIONAL THERAPY CONSULTING SERVICES, PLEASE COMPLETE THE REMAINDER OF THIS QUESTIONNAIRE.
IF YOU HAVE NOT USED OCCUPATIONAL THERAPY CONSULTANTING SERVICES, THANK YOU FOR TAKING THE TIME TO COMPLETE THIS SURVEY.

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THE FOLLOWING QUESTIONS ARE TO BE ANSWERED BY THOSE LAWYERS THAT HAVE USED OCCUPATIONAL THERAPY CONSULTING SERVICES

7. *I have used the following expert witness consultant(s) for personal injury cases:*

- ☐ *family physician*
- ☐ *physician specialists*
- ☐ *physical therapists*
- ☐ *nurses*
- ☐ *occupational therapists*
- ☐ *rehabilitation counsellors*
- ☐ *psychologists*
- ☐ *other (specify):* _____

8. *During the last year (1 July 1995 to 30 June 1996), I requested the following services from an occupational therapist:*

(☑ Check proportion of each type of referral

☑		<25%	25-50%	51-75%	76-100%
☐	*cost of future care*	☐	☐	☐	☐
☐	*functional capacity evaluation*	☐	☐	☐	☐
☐	*job visit*	☐	☐	☐	☐
☐	*vocational assessment*	☐	☐	☐	☐
☐	*homemaking evaluation*	☐	☐	☐	☐
☐	*case consultation*	☐	☐	☐	☐
☐	*report critiques*	☐	☐	☐	☐
☐	*leisure assessments*	☐	☐	☐	☐
☐	*other (specify)*	☐	☐	☐	☐

9. *During the past year (1 July 1995 to 30 June 1996), I referred approximately* _____ *of my medical-legal cases to an occupational therapist.*

10. *These referrals to occupational therapists represent approximately* _____ *% of my medical-legal cases handled during this one year period (1 July 1995 to 30 June 1996).*

11. *I expect to pay* _____ *for the following Occupational Therapy services.*
(If you don't use a service, please indicate that by writing N/A in the space following the service).

- ☐ *cost of future care* $ ☐
- ☐ *functional capacity evaluation* $ ☐
- ☐ *job visit* $ ☐
- ☐ *vocational assessment* $ ☐
- ☐ *homemaking evaluation* $ ☐
- ☐ *case consultation* $ ☐
- ☐ *report critiques* $ ☐
- ☐ *leisure assessments* $ ☐
- ☐ *other (specify)* _____ $ ☐

Hourly Rate for Professional Services: $ ☐

Hourly Rate for Court Services: $ ☐

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12. *When referring my client to an occupational therapist ,I prefer that individual have the following qualification(s):*

Academic

☐ *Bsc* ☐ *Msc* ☐ *PhD* ☐ *Other(Specify)* _____

Minimum years of experience:

☐ *0-5 Years*	☐ *6-10Years*	☐ *11-15 Years*	☐ *16-20 Years*	☐ *21-25 Years*	☐ *26+Years*

Qualified as an Expert Witness:

☐ *Essential* ☐ *Optional*

Published Articles:

☐ *Essential* ☐ *Optional*

Specialized training/experience (☑ check any desirable characteristics)

☐ *teaching* ☐ *clinical specialist*

☐ *research* ☐ *other (specify)* _____

13. *Rate the importance of occupational therapy consulting services, relative to other health care providers that you use for personal injury cases. Using the three-point scale, rate your perception of the importance of the medical-legal data each professional can provide in a personal injury case.*

Rating Scale

1 = not as important as occupational therapy
2= equally important as occupational therapy
3= more important than occupational therapy

☐ *medical specialists*	☐ *psychologists*	☐ *massage therapists*
☐ *nurses*	☐ *family doctor*	☐ *vocational counsellors*
☐ *chiropractors*	☐ *physical therapists*	☐ *other (specify)*

_____

14. *In my opinion, the following characterize a successful consultative association with an occupational therapist?*

Please ☑ check appropriate factors

☐ *available for pre-evaluation referral consultation*	☐ *clearly stated opinion regarding functional abilities*
☐ *coordination of functional findings with medical data on file*	☐ *clear, comprehensive documentation of results*
☐ *available for a post-evaluation consultation*	☐ *answers all referral questions*
☐ *provided objective findings regarding functional abilities of clients*	☐ *available to discuss finding during the evaluation process*
☐ *supported findings with related research*	☐ *open to negotiation (describe):* _____
☐ *other (specify):* _____	_____

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15. What factors characterize an unsuccessful consultative association with an occupational therapist.

- ☐ a pre-evaluation referral consultation was not provided
- ☐ functional findings were not coordinated with medical date on file
- ☐ a post-evaluation consultation was not provided
- ☐ opinion regarding functional abilities was unclear
- ☐ testing techniques/methodology were not explained
- ☐ functional findings were too subjective
- ☐ functional findings were not supported by related research
- ☐ documentation was unclear
- ☐ referral questions were not answered
- ☐ unavailable for discussion of findings during the evaluation process
- ☐ other (specify) _____

16. In my opinion, the most important skills that an occupational therapist provides in medical-legal consulting are (is):

- ☐ able to evaluate the lifestyle impact of medical impairment ratings
- ☐ training in objective functional evaluation
- ☐ training in enhancement of functional abilities
- ☐ well developed interpersonal and counselling skills
- ☐ understanding of medical terminology and documentation
- ☐ holistic training in disease and disability
- ☐ other (specify) _____

17. How satisfied are you with occupational therapy services?
Place an "X" on the line to indicate your overall satisfaction with occupational therapy consulting services.

very dissatisfied _____ very satisfied

18. Additional Comments:

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DEFINITION OF TERMS

Case Consultation	*a review of an individual's health status including documents on file, recommending therapeutic strategies appropriate to the individual.*
Cost of Future Care	*determination of personal care requirements for the individual's lifespan.*
Functional Capacity Evaluation	*the comprehensive, objective testing of a person's ability in work-related tasks.*
Homemaking Evaluation	*an assessment of home productivity capacities and requirements for assistive equipment and/or replacement labour services.*
Job Visit	*a site visit to evaluate job demands.*
Leisure Assessments	*the ability to perform relevant leisure activities.*
Report Critiques	*a professional critique of the work of another expert.*
Vocational Assessment	*a comprehensive, interdisciplinary process of evaluating an individual's physical, mental and emotional liabilities, limitations and tolerances... in order to identify functional competencies and liabilities (e.g. personality, aptitudes, interests, work habits, physical abilities and tolerance.*

Dr. Lili Liu / Debra Hall-Lavoie
CCHS Telehealth Centre
Dean's Office
Faculty of Rehabilitation Medicine
3-50 Corbett Hall
University of Alberta
Edmonton, Alberta T6G 2G4

___ Please send a copy of the results of this study

Name: _____

Address: _____

_____

Fax: _____

APPENDIX C
Occupational Therapist Interview and Consent Form

GUIDELINES:
SEMI-STRUCTURED INTERVIEW WITH OCCUPATIONAL THERAPISTS

Name of Subject:_____ **Interviewer:**_____

Date:_____ **Time:**_____

Instructions for Interviewee:
You are about to participate in an interview addressing your experiences providing medical-legal expert witness services to lawyers. The interview will last approximately one hour and will be audio-taped. You are free to withdraw from the study at any point. Answering all questions is optional. Please review the informed consent form.

Instructions for Interviewer:
Review and sign the consent form with the participant (if a participant declines to sign the consent form, note their preferences and end the interview session). Provide a copy of the consent form to the participant. Conduct the interview, following the list of questions below. Ask each question and confirm the interviewee's responses with neutral, clarifying questions. If a participant declines to answer a question, note their preferences and continue with the next question. If the participant declines to continue with the interiview, note their preference to withdraw from the study and courteously end the interview session.

Questions:

1. Describe your current medical-legal practice.
   (number of medical-legal cases per year, proportion of your overall productivity)
2. How did you get started in medical legal consulting?
3. Describe the value of occupational therapy in personal injury cases.
4. Describe one of your most successful cases.
5. Describe one of your most challenging cases.
6. Describe one of your biggest disappointments.
7. Describe your typical relationship with your referring lawyers.
8. Describe the most successful partnership that you had with a lawyer. What contributed to the success of this association?
9. Describe the most disappointing partnership that you had with a lawyer. What

contributed to this negative association?

10. Have you ever experienced work stressors? If yes, describe.

11. What are the personal skills that you bring to this type of work? Describe how you use these skills (for success).

12. Let's discuss your personal academic preparation and work experience credentials, relative to assuming the role of the occupational therapy expert witness. How prepared did you feel to assume this role? In what areas would you have benefitted from development?

13. Describe your most memorable medical-legal case to date.

14. If you could give some advice to someone getting started in medical-legal work, what would you tell them?

15. Do you have any other comments regarding the role of occupational therapists providing this type of service?

INFORMED CONSENT FORM:
Occupational Therapists as Expert Witnesses

I, _____, agree to volunteer in a study examining the role of occupational therapists as expert witnesses. This study, entitled 'The Role of Occupational Therapy Expert Witnesses in Alberta', is being conducted by Debra Hall-Lavoie, under the supervision of Dr. Lili Liu at the University of Alberta.

The study has been explained to me. The purpose of this research project is to examine the use of occupational therapy consulting services by Alberta lawyers and the experiences of occupational therapists that provide those services. I understand that the information that I provide will be used to examine the consulting relationship that occupational therapists have with their referring lawyers. The results of this study may be used to guide the occupational therapy membership when serving as an expert witness. Results may contribute towards the development of guidelines for practice, or provide the foundation for undergraduate or continuing educational programming.

I have been selected as a subject in this study after indicating my willingness to participate during the initial survey portion of this study. I understand that the study requires my participation in an interview of one hour's duration, in-person or by speaker phone. During the interview, I will be asked questions about my experiences providing medical-legal consulting services. The interview will be conducted by a research assistant and audio-taped.

There are no known risks associated with participation in this study. My identity will be held in confidence by the University of Alberta and will not be divulged to any source. All written materials and audio tapes will be secured in locked cabinets in the thesis supervisor's laboratory in the Department of Occupational Therapy. The results of this study may be presented or published. The researchers agree to protect my confidentiality in any presentations or publications arising from the study.

By signing this form, I indicate my willingness to participate in the study. I understand that I can withdraw my participation in this study at any time. Questions regarding the study can be directed to the principle researcher or supervising faculty.

I have received a copy of this consent form.

Name (print): _____ Researcher (print):_____

Signature: _____ Signature:_____

Witness (print):_____ Date: _____

Signature:_____

For further information, contact:

Dr. Lili Liu, Supervising Faculty (492-5108)
3-14 Corbett Hall, Department of Occupational Therapy
University of Alberta, Edmonton, AB T6G 2G4

Debra Hall-Lavoie, Principle Researcher (434-6517)
2-64 Corbett Hall, Department of Occupational Therapy
University of Alberta, Edmonton, AB T6G 2G4

APPENDIX D
Follow-up Letters

University of Alberta
Edmonton

Department of Occupational Therapy
Faculty of Rehabilitation Medicine

Canada T6G 2G4

2-64 Corbett Hall, Telephone (403) 492-2499
Fax (403) 492-1626

20 November 1996

Dear Colleague:

We are writing to you about our survey that was recently sent by mail. You will remember that the survey is part of a research project which is examining the use of occupational therapy consulting services by Alberta lawyers.

YOU ARE VERY IMPORTANT! We value what you have to say to us. We want to hear your opinions about this important professional issue. Do you provide this type of service? Have you considered this aspect of practice? What are your experiences? Your experiences and opinion are vitally important to the success of this project.

Your opinion is so important to us that we are enclosing a second copy of the survey for your convenience. Please take a moment of your time and respond to this survey.

If you have already responded to the survey, thank you for your time.

Sincerely,

Debra Hall-Lavoie
Principal Researcher

Dr. Lili Liu
Assistant Professor

University of Alberta
Edmonton
Canada T6G 2G4

Department of Occupational Therapy
Faculty of Rehabilitation Medicine
2-64 Corbett Hall, Telephone (403) 492-2499
Fax (403) 492-1626

27 November 1996

Dear Colleague:

I am writing to you about our survey that was recently sent by mail. You will remember that the survey is part of a research project which is examining the use of occupational therapy consulting services by Alberta lawyers.

WE WANT TO HEAR YOUR OPINIONS! Please take a moment of your time and respond to this important survey. Examination of this professional issue is timely and relevant to your professional colleagues.

Thank you so much for your kind help and cooperation. We look forward to your responses.

Sincerely,

Debra Hall-Lavoie
Principle Researcher

Dr. Lili Lui
Assistant Professor

University of Alberta
Edmonton
Canada T6G 2G4

Faculty of Rehabilitation Medicine
Office of the Dean
3-48 Corbett Hall
Telephone (403) 492-2903 / 5991
Fax (403) 492-1626

20 November 1996

Dear Sir/Madam:

We are writing to you about our survey that was recently sent by mail. You will remember that the survey is part of a research project which is examining the use of occupational therapy consulting services by Alberta lawyers.

YOU ARE VERY IMPORTANT! We value what you have to say to us. We want to hear your opinions about this important professional issue. Do you use occupational therapy services? What are your experiences? Your experiences and opinions are <u>vitally</u> important to the success of this project. **Please return the survey, even if you do not use occupational therapy services.**

If you have already responded to the survey, thank you for your time.

Sincerely,

Debra Hall-Lavoie
Principal Researcher

Dr. Lili Liu
Assistant Professor

University of Alberta
Edmonton
Canada T6G 2G4

Department of Occupational Therapy
Faculty of Rehabilitation Medicine
2-64 Corbett Hall, Telephone (403) 492-2499
Fax (403) 492-1626

27 November 1996

Dear Sir/Madam:

This is a second and final reminder about our survey that was recently sent by mail. You will remember that the survey is part of a research project which is examining the use of occupational therapy consulting services by Alberta lawyers.

WE WANT TO HEAR YOUR OPINIONS! Please take a moment of your time and respond to this important survey. Your experiences and opinions are vitally important to the success of this project. Please return the survey even if you have not used occupational therapy consulting services.

If you have already responded to the survey, thank you for your time.

Sincerely,

Debra Hall-Lavoie
Principle Researcher

Dr. Lili Liu
Assistant Professor

APPENDIX E
Letters of Support

aarot
ALBERTA ASSOCIATION OF REGISTERED OCCUPATIONAL THERAPISTS

SUITE 311 4245 - 97 STREET • EDMONTON, ALBERTA T6E 5Y7 • TELEPHONE (403) 436-8381 • FAX 434-0658
1-800-561-5429

September 06, 1996

Debra Hall-Lavoie
9622-42 Avenue
Edmonton, AB
T6E 5Y4

Dear Ms. Hall-Lavoie:

Pursuant to your recent correspondence, I would like to take this opportunity to offer the support of the Alberta Association of Registered Occupational Therapists (AAROT) for your upcoming research project entitled 'The Role of Alberta Occupational Therapy Expert Witnesses'.

The Alberta Association of Registered Occupational Therapists (AAROT) recognizes the importance of research as do our colleagues throughout the province. It is only through new and innovative research that the profession will continue to grow and meet the ever changing needs of the healthcare marketplace.

Debra, congratulations on this exciting undertaking. I know that occupational therapists throughout the province will offer their individual support to this worthwhile project. I look forward to the results.

Sincerely,

Sandra Swaffield

Sandra Swaffield
President

The Canadian Bar Association

ALBERTA BRANCH

Greg A. Harding, Q.C.
President
Sean Dunnigan
Secretary

James A. Bancroft
Vice-President
James L. Lebo, Q.C.
Past-President

Kirk Lambrecht
Treasurer
Terry Evenson
Executive Director

September 27, 1996

Members of the Canadian Bar Association

RE: "The Role of Occupational Therapy Expert Witnesses in Alberta" Thesis Research Project Master of Science Occupational Therapy

I have been asked by Ms. Hall-Lavoie to provide this letter of support for her thesis research project, "The Role of Alberta Occupational Therapy Expert Witnesses."

Ms. Hall-Lavoie approached the Alberta Branch of the Canadian Bar Association seeking permission to send a questionnaire to members of the Canadian Bar Association. The questionnaire is intended to as a research device to gather information which will assist her in the research for her degree, a Master of Science in Occupational Therapy.

Ms. Hall-Lavoie's project has passed a rigorous assessment and approval process at the University of Alberta including a review by a thesis committee and an ethics committee comprised of persons from the Faculties of Rehabilitation Medicine and Law. It also has the support of the Alberta Association of Occupational Therapists.

It was agreed that the Alberta Branch would, on a one time basis, provide Ms. Hall-Lavoie with mailing labels enabling her to mail the questionnaire to the members of the Civil Litigation, Insurance Law and Personal Injury Law sections in Edmonton and Calgary. The mailing is done at her expense. Ms. Hall-Lavoie has not retained mailing lists for future use.

The Canadian Bar Association, Alberta Branch, is pleased to be able to contribute to this worthy project.

Please take the time to complete the questionnaire and to return it to Ms. Hall-Lavoie.

KNL

Kirk N. Lambrecht

Reply to: ☐

☐ Southern Office: #1830, 540 - 5 Avenue S.W., Calgary, Alberta T2P 0M2 Telephone (403) 263-3707 Fax (403) 265-8581 email: cba_alb@agt.net

☐ Northern Office: #2610, 10104 - 103 Avenue, Edmonton, Alberta T5J 0H8 Telephone (403) 428-1230 Fax (403) 426-6803

APPENDIX F
Follow-up Correspondence to Occupational Therapy Respondents

University of Alberta
Edmonton

Department of Occupational Therapy
Faculty of Rehabilitation Medicine

Canada T6G 2G4

2-64 Corbett Hall, Telephone (403) 492-2499
Fax (403) 492-1626

[NAME OF INTERVIEWEE]

April 2, 1997

Dear [INTERVIEWEE],

We would like to thank you for your participation in the study entitled, "*Occupational Therapists as Expert Witnesses*". Because of your willingness to volunteer your time, we have been able to conduct more interviews than we had anticipated. All of the interviews have been transcribed by a neutral party. Subsequently, Judy Quach and Dr. Liu read each transcript carefully and removed any information that would reveal the identity of the interviewee. This version of the transcript was then forwarded to the principal investigator, Debbie Hall-Lavoie, who will be conducting qualitative analyses to supplement the quantitative analyses of the mail surveys.

We are aware that some of the interviewees have requested to view the results of this study as soon as possible. We anticipate that Debbie will complete her thesis within the next two months. Once her thesis has been accepted by her thesis committee and by the Faculty of Graduate Studies and Research, we will forward a summary of the results to you.

Once again, we appreciate your participation in this study. On behalf of the principal investigator, we thank you for your time and efforts.

Sincerely,

Lili Liu, PhD
Assistant Professor & Supervisor

Judy Quach
Research Assistant (Interviewer)